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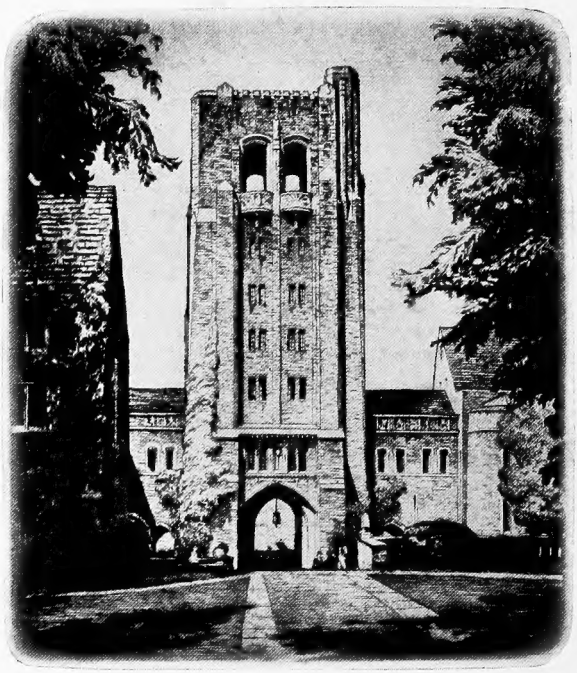

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KAY

ON THE LAW

RELATING TO

SHIPMASTERS AND SEAMEN.

SECOND EDITION.

THE LAW

RELATING TO

SHIPMASTERS AND SEAMEN

THEIR APPOINTMENT, DUTIES, POWERS, RIGHTS, AND LIABILITIES.

BY

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SECOND EDITION.

BY

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LONDON:

STEVENS AND HAYNES,

Law Publishers,

BELL YARD, TEMPLE BAR.

1894.

PREFACE TO THE SECOND EDITION.

THE scope and object of the following work is described by the author in the original preface, which is printed below. In order that it may be better adapted for use by Shipmasters and others, to whom compactness is important, the present edition has been confined within the dimensions of a single volume, a proportionate reduction being made in the price. The carrying out of this object has involved much compression and re-arrangement, producing a considerable change of form; while the lapse of some nineteen years since the publication of the first edition has involved an equally considerable change of substance. Indeed many passages have been almost entirely re-written—for example, those relating to demurrage, general average, the master's lien on the cargo and his remedies for wages and disbursements, and the chapters on collisions and salvage; while much new statutory matter has been necessarily inserted.(*a*) On the other hand, the editors have made it their object to utilise to the full the wide research which characterised the work of the late Mr. Kay; and they confi-

(*a*) The Sea-fishing Service is now the subject of a special series of statutes. It has not been thought necessary or desirable to do more than briefly refer to their more important provisions, in dealing with the corresponding clauses of the general Acts.

dently hope that in studying brevity they have not unnecessarily sacrificed any of the fruits of his industry.

The number and complexity of the statutes and orders relating to the subject were referred to in the preface to the first edition. The inconvenience then complained of has been steadily growing ever since, until the codification advocated by the author would seem to be a necessity; and it has at length, after being talked of for many years, been embodied in a Bill presented to the House of Commons in August, 1893. This circumstance, occurring after nearly three-fourths of the text had been printed off, rendered it necessary to suspend further progress until a recent date, when it became known that the measure would be dropped; and the publication of the present volume, which, it was hoped, would have been completed by the beginning of the legal year, has been consequently delayed until the present time. The future fate of the Bill and the shape in which it may ultimately receive the sanction of Parliament are alike uncertain; but should it become law within the next twelve months it is in contemplation to make it the subject of a supplementary volume. Some slight further delay has been occasioned by the recent Employers' Liability Bill; the passage relating to that subject having been kept in type in the expectation that the Bill would pass.

Several new titles have been added to the Index, which, it is hoped, will increase its utility, and great care has been taken to render the parallel references in the Table of Cases as complete as possible. The delay in publication above noticed renders it necessary to direct especial attention to the *addenda*, which are inevitably more numerous than would otherwise have been the case.

The editors desire to express their sense of obligation to Mr. Leaker, of the Board of Trade, and to other officials of that Department and of the Trinity House, for the ready courtesy with which they supplied copies of all documents and orders for which application was made, and some of which will be found reproduced in the Appendix.

They also wish to acknowledge their indebtedness, as well to the valuable works of the Hon. Mr. Justice Kennedy, Mr. R. G. Marsden, and Mr. T. G. Carver, on Salvage, Collisions, and Carriage by Sea respectively, as to the older treatises (*b*) referred to in the Author's preface.

J. W. M.

G. W. D.

THE TEMPLE,
February, 1894.

(*b*) In the present edition the references to Arnould's "Marine Insurance" are to the Second Edition, the last published in the author's lifetime.

ORIGINAL DEDICATION.

TO

SIR JAMES PHILLIPS KAY SHUTTLEWORTH,

BART., D.C.L. OF OXFORD, ETC.

MY DEAR JAMES, this book, upon which I have been engaged for the last ten years, I dedicate to you, who encouraged and enabled me to overcome the earlier difficulties of my professional career.

Your affectionate Brother,

JOSEPH KAY.

9 KING'S BENCH WALK, TEMPLE,
15*th April*, 1875.

PREFACE TO THE FIRST EDITION.

THIS book is an attempt to state simply and clearly that part of the British Shipping Laws which more particularly affects Shipmasters and Seamen. It does not pretend to be a complete Treatise on the Shipping Laws. There are several important portions of those Laws of which it does not treat at all. There are others, of which it only treats so far as is necessary to explain its own particular subject. It is hoped that it may prove to be a useful book of reference for intelligent Masters, and for Ship-agents and Consuls in foreign ports, on matters relating to Shipmasters and Seamen.

I need hardly say that I have been greatly aided in its compilation by the learned and able works and researches of those who have preceded me in the treatment of the subject of our Shipping Laws.

I am more particularly indebted, as the references will show, to the able but condensed Compendium of the Law of Merchant Shipping, by the Hon. Mr. Baron Pollock and Mr. Maude;—to the learned Treatise on the Law of Merchant Shipping, by Mr. Maclachlan;—to Mr. Maclachlan's very careful and learned edition of Sir Joseph Arnould's Treatise on the Law of Marine Insurance; (*c*)—to the late Mr. Justice Shee's edition of Lord Tenterden's Treatise of the Law relative to Merchant Ships and Seamen;—to Mr. Parson's Treatise on the Law of Shipping;—to Mr. Phillips' Treatise on the Law of Insurance;—and to the

(*c*) See note (*b*) in Editors' preface.

learned and most useful Treatise on the Jurisdiction and Practice of the High Court of Admiralty, by Mr. Williams and Mr. Gainsford Bruce.

I have only treated of a portion of the subjects upon which these learned gentlemen have written, and I have treated such portion in reference to its relation to Shipmasters and Seamen, and not in reference to its relation to the Shipowners.

The British Empire possesses the greatest Mercantile Marine of which history gives any record.

* * * * *

For such a vast Mercantile Fleet one would have thought that everything possible would have been done to render the law affecting such a vital part of our Imperial Empire as clear, as simple, and as easily to be inquired into and understood as was possible.

Instead of this, however, the state of our Shipping Laws is such, that it is a difficult task, even for an experienced lawyer, to find his way among the mass of Statutes, Orders in Council, Orders of the Board of Trade, Regulations of the Trinity House, and decisions of the various Courts, which together constitute the law upon this subject.

For any one but a lawyer to find out his way without professional assistance is simply impossible.

It is strange to think that even the limited part of the Shipping Laws, of which this work treats, is made up of

35 Statutes;

17 Orders in Council;

Great numbers of Instructions of the Board of Trade;

Great numbers of Bye-laws and Regulations of the Trinity House and of the different ports; and

Great numbers of cases decided on numberless points in the various Courts.

What renders the confusion still greater, is the fact that of the Statutes which are in force and relate to this subject, some repeal parts of former Statutes; some alter, or, as it is called, amend former Statutes; some re-enact former provisions; some

add to them; so that it is often difficult to ascertain with certainty what sections remain in force, or what is the exact effect of the existing laws.

Even while this work is being printed, another Bill is before Parliament proposing to repeal or alter portions of the existing Statutes and of the existing law.

All this is a matter of serious regret. And it must be said, that it is difficult to conceive what should prevent a complete codification of the whole of the Shipping Law, in so simple and clear a form that every intelligent Shipowner or Master should be able easily to ascertain for himself the leading rules of the law upon any matters relating to their business.

In default of such a code, I have endeavoured to compile a guide and reference book for Masters, Ship-Agents, and Consuls, to aid them, as far as the present state of the Shipping Laws of the great British Empire will enable me to do so.

I cannot conclude this Preface without giving myself the pleasure of acknowledging the kind and generous assistance which I have received from the Hon. A. F. O. Liddell, Under-Secretary for the Home Department; from Mr. Gray, one of the Assistant Secretaries of the Board of Trade; and from the officers of the Trinity House.

These gentlemen have most courteously enabled me to obtain from their respective Departments, copies of all the documents and diagrams which were necessary for the explanation and illustration of this work.

[THE TEMPLE,
15*th April*, 1875.]

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ADDENDA AND CORRIGENDA.

§ 40. *To* note (*m*), *add* "See also, as to Victoria, the Order in Council of November 23, 1893."

§ 46. *To* note (*u*), line 3, *add* "A fishing 'coble' is a ship, though capable, when light, of being propelled by oars only. *Ex parte Ferguson*, L. R. 6 Q. B. 280."

§ 48. Note (*o*), *for* "17 & 18 Vict. c. 104," *read* "39 & 40 Vict. c. 80."

§ 122. *To* note (*x*), *add* "See further, as to the right of the registered owner to call for the certificate of registry, *The Celtic King*, 63 L. J. Ad. 37."

§ 143. *To* line 4, *add* "Nor will such non-compliance release a charterer who has by his conduct waived his right to repudiate the contract. In such a case he will be, on the one hand, required to pay the chartered freight, and, on the other, entitled to recover such damages as he has sustained by the breach of the condition. *Bentsen* v. *Taylor*, [1893] 2 Q. B. 274."

§ 152. *To* note (*p*), *add* "In *The Glendevon*, [1893] P. 269, it was held that days excepted from the lying time were also to be excepted in the calculation of despatch money."

§ 156. *To* notes (*g*), (*h*), *add* "*Furness* v. *White*, [1894] 1 Q. B. 483."

§ 158. In first marginal note on p. 97, *for* "shipowner" *read* "charterer."

To note (*t*), *add* "*Bulman* v. *Fenwick*, [1894] 1 Q. B. 179."

§ 159. *To* note (*h*), *add* "*The Nifa*, [1892] P. 411."

§ 168. In line 3, after the words "excepted peril," *add* note (*j*) "The exemption is not affected by the fact that the port of discharge was determined by the charterer's option, at all events where the excepted cause came into existence after the option had been exercised. *Bulman* v. *Fenwick*, [1894] 1 Q. B. 179."

To note (*k*), *add* "also in *Smith* v. *Rosario Nitrate Co.*, [1893] 2 Q. B. 323; affd. in C. A., [1894] 1 Q. B. 174."

§ 169. At the end of the §, *add* "Even where the exceptions include 'cessation from work of hands . . . engaged in the getting, carriage, or loading of the cargo,' the charterer is not relieved by a 'cessation' in the carriage of the cargo from the persons under contract to supply it to him, provided the particular cargo is not specified in the charter-party, and there are other sources from which a cargo of the description therein mentioned can be obtained. *The Rookwood*, 10 T. L. R. 314."

§ 223. *To* note (*p*), *add* "But a port does not cease to be a 'safe port' by reason of a strike preventing the discharge of the ship; nor, it seems, does such a circumstance affect the charterer's option. At all events it imposes on him no obligation to recall an option already exercised. *Bulman* v. *Fenwick*, [1894] 1 Q. B. 179."

§ 236. *To* note (*n*), *add* "*The Glendarroch*," 10 T. L. R. 269."

§ 239. Line 6. After the word "interests" *add* note (*zz*), "In *The Industrie* ([1894] P. 58: see p. 75), Lord Esher, M. R., repeated and emphasised a doubt expressed by him in *The Gaetano and Maria* (7 P. D. at p. 145), 'Whether the master is ever the agent of the owner of the cargo,' although he may have certain rights with regard to it as agent for the owner of the ship."

§ 257. *To* note (*f*), *add* "as to the measure of damages for not loading a full and complete cargo, see *Aitken* v. *Ernsthausen*, 10 T. L. R. 256."

To note (*k*), *add* "five *per cent.* in *The Resolven*, 9 T. L. R. 75 (phosphate in bulk)."

§ 268. *To* notes (*f*), (*g*), *add* "*Furness* v. *White*, [1894] 1 Q. B. 483."

§ 275. *To* note (*q*), *add* "The '24 hours clause,' suspending the accrual of freight in case of loss of time by breakdown of machinery for more than 24 hours, is now almost universal in time-charters. See *The Bedouin*, [1894] P. 1."

§ 276. At the end of the §, *add* "Where the charter-party provides for money 'to be advanced for ship's disbursements' against freight, at an agreed rate of exchange, the master may, if he pleases, have recourse to other moneys, and the charterer cannot recover from the shipowner the loss of a profit he would have made on the advances. *The Primula*, 96 L. T. J. 392."

§ 277. *To* note (*e*), *add* "*Oriental S.S. Co.* v. *Tylor* was reversed ([1893] 2 Q. B. 518) on the ground that the advance freight was payable unconditionally on signing bills of lading, which it was in that case the charterer's duty to present, a duty from which he was not relieved by the loss of the ship, and for breach of which the agreed amount of advance freight was the proper measure of damages."

§ 281. *To* note (*e*), *add* "*The Bedouin*, [1894] P. 1."

§ 308. In line 7, *for* "is," *read* "has been."

In line 8, on p. 211, after the word "used," *insert* "But the foregoing propositions must now be received with caution, having regard to the recent decision in *Hansen* v. *Harrold* (C. A., March 1; Times, March 2, 1894). That was an action for the balance of a lump-sum chartered freight payable on delivery of the cargo. Owing to shrinkage of grain carried under a sub-charter and bills of lading making freight payable on quantity delivered, the amount for which a lien could be enforced was less than the balance of freight due under the charter-party. It was held that the cesser clause afforded the charterer no defence to the action, Lord Esher, M.R., observing, 'The cesser clause, coupled with the stipulation for a lien, ought to be construed in accordance with the principle laid down in *Clink* v. *Radford*, [1891] 1 Q. B. 625, and when so construed, it does not apply where by the terms of the charter-party, the charterer is enabled by means of a sub-charter to bring into existence a lien which is not co-extensive with the lien given by the charter.' It seems to follow that in such a case at all events, the limitation of the clause is the same, whether the liability arose before or after its coming into operation."

Note (*a*), *For* "28 L. T. 267," *read* "28 L. T. O. S. 267."

To note (*f*) *add* "See, however, *Hansen* v. *Harrold*, Times, March 2, 1894."

§ 313. To note (*u*), *add* "and see *Furness* v. *White*, [1894] 1 Q. B. 483."

§ 328. *To* ss. 70, 72 of the M.S. Act, 1862, *add* note (*m*) "An indorsee of the bill of lading, who is a consignee for sale and not the owner of the goods, by taking delivery without repudiating liability, impliedly contracts to pay the freight due; and this notwithstanding that he has made the required deposit. These sections preserve the right of the shipowner to sue him on his implied contract. *Furness* v. *White*, [1894] 1 Q. B. 483; and see §§ 156, 268, *supra*."

§ 331. At the end of the §, *add* "In such a case, if under the charter-party rights of the shipowner are to arise, or become enforceable, upon the signature of the bill of lading, it is the duty of the charterer to present it for signature after the goods are on board. *Oriental S.S. Co.* v. *Tylor* [1893], 2 Q. B. 518."

§ 333. In line 6 from bottom of page, after the word "so," *add* note (*j*) "The master cannot, in such a case, insist on inserting the words 'other conditions as per charter-party,' *Hansen* v. *Harrold*, Times, March 2, 1894."

§ 335. *To* note (*a*), *add* "*Simmonds* v. *Rose*, 10 T. L. R. 125."

§ 343. Note (*i*), *for* "51 & 52," *read* "52 & 53."

§ 345. In line 3, after the word "lading," *add* note (*ss*) "See *addendum* to § 333."

§ 357. Note (*i*), before the word "disting," insert "*The Glendarroch*, 10 T. L. R., 269."

§ 359. *To* note (*c*), *add* "See, however, *The Southgate*, [1893] P. 329."

§ 364. *To* note (*d*), *add* "Cp. *The Southgate*, [1893] P. 329."

§ 369. *To* note (*g*), *add* "*The Industrie*, [1894] P. 58."

§ 446. *To* note (*a*), *add* "and *addendum* thereto."

§ 468. Note (*m*) "See addendum to § 529."

§ 473. Note (*bb*), after the word "authorised," *read* "in the case of seamen."

§ 482. Note (*x*), *for* "22 & 23" *read* "21 & 22."

§ 506. Note (*q*), see *addendum* to § 508.

§ 508. *To* note (*o*), *add* "The question was recently raised at the Southampton Police Court whether certain seamen of the S. S. *Trent* could be convicted under sub-s. (4) of disobedience to a lawful command after the ship had been moored in safety, and it was held by the justices that, having regard to the terms of sub-s. (3), they could not. *Sed qu.* Reference was also made to 43 & 44 Vict. c. 16, s. 5 (a) (*infra*, § 532). It is believed that the case is under appeal. See *Standard*, February 13, 15 (letter to the Editor), 1894."

§ 524. *To* note (*g*), *add* "The current rules will be found in Appendix No. 9A, *post*."

§ 529. *To* notes (*z*), (*a*), *add* "*Hedley* v. *Prickney, &c., Co.* was affirmed by the House of Lords, March 8, 1894."

§ 587. Note (*m*), *for* "§ 301," *read* "§ 236."

§ 596. *To* note (*xx*), *add* "and to New South Wales (November 23, 1893)."

§ 686. In line 4, after the word "person," *add* "Even where no loss of life, or serious injury, is occasioned, boiler explosions must, within 24 hours, or as soon after as possible, be notified to the Board by the master or owner, under the Boiler Explosions Act, 1890 (53 & 54 Vict. c. 35, ss. 2, 3)."

NOTE.—A pipe connected with a boiler is a "boiler" for the purposes of this Act, *R.* v. *Commissioners under the Boiler Explosions Act, 1882*, [1891] 1 Q. B. 703.

§ 698. *To* note (*d*) after line 3, *add* "*The Maasdam*, 69 L. T. 659; *The Helvetia*, Cor. Gorell Barnes, J., Ad. Div., Feb. 27, 1894."

§ 701. *To* note (*k*), *add* "*The Maasdam*, 69 L. T. 659."

§ 717. Four lines from the end of the §, after "salvors," *insert* "If the first set retire, at the desire of the ship in distress, so that the salvage may be completed by a second set, the first salvors will be entitled to remuneration, not only for the services which they have actually rendered, but for those also which they were ready and able to perform. *The Maasdam*, 69 L. T. 659."

§ 720. *To* note (*q*), *add* "See however the remarks of Sir F. Jeune on this subject, *The Maasdam*, 69 L. T. at p. 661."

THE LAW RELATING TO

SHIPMASTERS AND SEAMEN.

CHAPTER I.

THE PUBLIC AUTHORITIES.

§§ 1, 2.—*The Board of Trade—Its General Functions with reference to Masters and Seamen* 1

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The Board of Trade; its General Functions with Reference to Masters and Seamen.

Board of Trade is department to superintend merchant shipping.

§ 1. THE Board of Trade is the department entrusted by the Merchant Shipping Act, 1854, with the general superintendence of matters relating to merchant ships and seamen, and is authorised to carry into execution the provisions of that Act, and of all other Acts relating to merchant ships and seamen in force for the time being, other than such Acts as relate to the revenue.(*a*)

General powers and duties of the Board of Trade.

Certificates and documents issued by the Board, or under its direction, and purporting to bear its seal, or to be signed by its proper officers, are made receivable in evidence without further proof.(*b*) It is empowered to issue and sanction forms bearing its seal of books, instruments and papers for use under the Act;(*c*) and instruments made in such forms, or used by or under the direction of the Board, are exempt from stamp duty.(*d*) Persons who forge or fraudulently alter such seals or forms are guilty of a misdemeanour, and persons using other forms are liable to a penalty of £10.(*e*) The Board may require all consular officers, officers of Customs abroad, local Marine Boards and superintendents of mercantile marine offices,(*f*) to send to it returns or reports on matters relating to British merchant shipping or

(*a*) 17 & 18 Vict. c. 104, s. 6.
(*b*) *Ibid.*, s. 7.
(*c*) s. 8.
(*d*) s. 9.
(*e*) s. 10.
(*f*) Formerly called "Shipping Masters," see 25 & 26 Vict. c. 63, s. 15.

seamen; and may further require all such superintendents to produce all official log books and other documents which, in pursuance of the Act, are delivered to them.(*g*)

Officers of Board of Trade, naval officers, consuls, the Registrar-General of Seamen, officers of customs and superintendents, may inspect documents and muster crews.

§ 2. Every officer of the Board of Trade, commissioned officer of any of Her Majesty's ships on full pay, or British consular officer, the Registrar General of Seamen or his assistant, every chief officer of Customs in any place in Her Majesty's dominions, and every superintendent of mercantile marine offices may, in cases where he has reason to suspect that the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers, viz. :—

Require the owner, master or any of the crew of any British ship to produce any official log books or other documents relating to such crew or any member thereof in their respective possession or control:

Require any such master to produce a list of all persons on board his ship, and take copies of such official log books or documents or of any part thereof:

Muster the crew of any such ship:

Summon the master to appear and give any explanation concerning his ship or her crew or such official log books or documents. The maximum penalty for non-compliance with any such requisition, for impeding such muster of the crew, or knowingly misleading or deceiving any of the persons authorised to demand such explanation, is £20.(*h*)

Other duties and powers of the Board of Trade.

The Board of Trade has further important functions and powers relating to the inspection and survey of ships, their stores and equipment,(*i*) the granting(*k*) and cancelling of officers' certificates, inquiries into the conduct of their holders, and investigation of casualties.(*l*) These are considered below.

Local Marine Boards.

Their constitution

§ 3. By "The Merchant Shipping Act, 1854,"(*m*) local Marine Boards were constituted at seaports at which such Boards had

(*g*) 17 & 18 Vict. c. 104, s. 12.
(*h*) *Ibid.*, s. 13.
(*i*) See especially §§ 107–114; 524–529, and Chap. (Passengers) *infra*.
(*k*) §§ 25–41 *infra*.
(*l*) §§ 42–59 *infra*.
(*m*) 17 & 18 Vict. c. 104, s. 110. By s. 109, the whole of the third part of this Act (the part entitled "Masters and Seamen") shall apply to all sea-going ships registered in the United Kingdom (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the Trinity House, the Commissioners of Northern Lighthouses, or the port of Dublin Corporation, and also except pleasure yachts), and also to all ships registered in any British possession and employed in trading or going between any place in the United Kingdom and any place or places not situate in the possession in which such ships are registered, and to the owners, masters, and crews of such ships respectively, wherever the same may be. The same section gives a wider application to this part in relation to special subjects; its provisions will be referred to in dealing with those subjects. For the

theretofore existed, and at such other places as the Board of Trade should appoint. These Boards are composed of the mayor or provost and the stipendiary magistrate (*n*) as *ex-officio* members, together with four persons triennially appointed by the Board of Trade, and six who are triennially elected by shipowners, in manner provided by the Act.(*o*)

Upon the Marine Boards is imposed, as we shall see,(*p*) the duty of providing at their respective ports for the examination of masters and mates. and duties.

They are required to keep minutes of their proceedings in manner prescribed by the Board of Trade to whose inspection their minutes and all books and documents kept by them, their officers, or servants, are to be open. They are also required to make and send to the Board of Trade such reports and returns as it requires. Subject to this, they may regulate the mode in which their meetings are held and their business conducted.(*q*) In case of the failure of any Local Marine Board to meet or to discharge its duties, the Board of Trade may either take into its own hands the performance of those duties until the next triennial appointment and election, or direct a new appointment and election to take place immediately.(*r*) The Board may also, upon complaint that any appointments or arrangements made by a Local Marine Board are not such as to meet the wants of the port, or are unsatisfactory or improper, annul, alter, or rectify them as it deems expedient.(*s*) The conducting of their business.

purposes of this section, "an unregistered British ship (which ought to be registered under the Merchant Shipping Act, 1854)" is "deemed to have been registered in the United Kingdom," 46 & 47 Vict. c. 41, s. 49. And by 25 & 26 Vict. c. 63, s. 13, "The following vessels, that is to say—(1) Registered fishing-boats: repealed except so far as regards Scotland. See 46 & 47 Vict. c. 41 (the Merchant Shipping Fishing-boats Act, 1883); (2) Seagoing ships belonging to any of the three general lighthouse boards; (3) Seagoing ships being pleasure yachts; shall be subject to the whole of the third part of the principal Act, except sects. 136, 143, 145, 147, 149, 150—155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279—287." A vessel used exclusively upon the rivers Weaver and Mersey, the latter being tidal water, but within the port of Liverpool, is not a "seagoing ship," although so constructed as to be capable of going to sea. *The Salt Union* v. *Wood* (1893), 1 Q. B. 370. The whole of the Merchant Shipping Acts 1854 to 1876, and any Acts amending the same, may be applied by Order in Council to ships of any foreign State desiring that to be done, 39 & 40 Vict. c. 80, s. 37.

(*n*) In cases where there is more than one mayor, provost, or stipendiary magistrate, the Board of Trade appoints *ex officio* members from among their number.

(*o*) The provisions as to the qualification of voters and members, and the preparation and revision of lists of them, are very elaborate. They will be found in 17 & 18 Vict. c. 104, ss. 110—117. By s. 118 it is provided that no act of a Board is to be vitiated or prejudiced by any irregularity in the election of its members, or by any error in the list of voters or irregularity in preparing it, or by reason of any person who is not duly qualified acting on the board.

(*p*) 17 & 18 Vict. c. 104, s. 131, *inf.* § 26.

(*q*) 17 & 18 Vict. c. 104, s. 119. The power to regulate their meetings and business includes fixing a quorum, which however must not be less than three: 25 & 26 Vict. c. 63, s. 14.

(*r*) 17 & 18 Vict. c. 104, s. 120.

(*s*) *Ibid.*, s. 121.

Mercantile Marine Offices.

Local Marine Boards to establish Mercantile Marine offices.

§ 4. In every seaport in the United Kingdom, in which there is a Local Marine Board, such Board is required by "The Merchant Shipping Act, 1854," to establish a Mercantile Marine Office or Offices,(*t*) for which purpose it is empowered to procure the requisite premises, and appoint and remove Superintendents of Mercantile Marine Offices,(*u*) with necessary deputies, clerks, and servants. Every act done by or before any deputy duly appointed has the same effect as if done by or before a Superintendent. The Local Marine Board is entrusted with the regulation of business at the Mercantile Marine Offices, and subject to the powers of the Board of Trade with complete control over them.(*x*)

Board of Trade to have partial control over such offices.

§ 5. The sanction of the Board of Trade is necessary so far as regards the number of persons appointed by any local Marine Board, and the amount of their salaries and wages and all other expenses; the Board of Trade also has immediate control of Mercantile Marine offices as regards the receipt and payment of money thereat; it may require security for the due performance of their duties from all superintendents, deputies, clerks, and servants appointed by any Local Marine Board; and may, if it has reason to believe that any of those officials does not properly discharge his duties, cause the case to be investigated, and, if it thinks fit, remove him from his office, and provide for the performance of his duties until the appointment of his successor.(*y*)

General business of marine office superintendents.

§ 6. The general business of superintendents of Mercantile Marine offices is(*z*)—

To afford facilities for engaging seamen by keeping registries of their names and characters;

To superintend and facilitate their engagement and discharge in the manner prescribed;

To provide means for securing the presence on board at the proper times of men who are so engaged;

To facilitate the making of apprenticeships to the sea service;

(*t*) Formerly termed "Shipping Offices." See 25 & 26 Vict. c. 63, s. 15.

(*u*) Formerly termed "Shipping Masters." *Ibid.*

(*x*) 17 & 18 Vict. c. 104, s. 122; "in any case where the mercantile marine business is conducted otherwise than under a local Marine Board, the Board of Trade is empowered, instead of conducting such business at a custom house or otherwise (see § 7 *infra*), to establish a mercantile marine office, to appoint and remove the requisite superintendents, deputies, clerks, and servants, and to exercise the powers of a local Marine Board with respect to holding examinations for certificates of competency." 36 & 37 Vict. c. 85, s. 10.

(*y*) 17 & 18 Vict. c. 104, s. 123.

(*z*) *Ibid.*, s. 124.

To keep a list of seamen who have deserted or failed to join after signing an agreement to proceed to sea, and to show such list to any master of a ship; (*a*)

To perform such other duties relating to merchant seamen and merchant ships as are by the Merchant Shipping Acts, or under the powers therein contained, committed to them. (*b*)

Penalty on superintendents taking fees.

Any superintendent or other official in a Mercantile Marine office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, is liable for each offence to a penalty not exceeding twenty pounds, and also to dismissal. (*c*)

Marine office business may be transacted at Custom Houses.

§ 7. At any place where there is no separate mercantile marine office, the business of such office may, by direction of the Board of Trade with the consent of the Commissioner of Customs, be conducted at the Custom House; in which case the powers and duties of a superintendent of mercantile marine offices devolve upon the officer of Customs to whom such business is committed. (*d*)

In London sailors' homes may be shipping offices.

In London the Board of Trade is impowered to appoint superintendents, or other persons connected with sailors' homes, to be superintendents of mercantile marine offices, with necessary deputies, clerks, and servants, and any office in a sailors' home to be a merchantile marine office. Such superintendents and officers are subject to the immediate control of the Board of Trade, and not of the Local Marine Board. (*e*)

Dispensation with superintendents.

The Board of Trade also has power to dispense with the transaction before a superintendent, or in a mercantile marine office of any matters required to be so transacted. (*f*)

§ 8. Any person appointed to any office or service by or under any local Marine Board, is deemed to be a clerk or servant within the meaning of the Larceny Act, (*g*) and as such may be guilty of embezzlement. (*h*)

Punishment for embezzlement in shipping offices.

Any such person who fraudulently applies or disposes of any chattel, money, or valuable security received by him whilst employed in such office or service for or on account of any such local Marine Board, or for or on account of any other public board or department, to his own use or any use or purpose other than that for which the same was paid, entrusted to, or received

(*a*) 52 & 53 Vict. c. 46, s. 3.

(*b*) As to the duties of superintendents with regard to sea fishing boats and their crews, see 46 & 47 Vict. c. 41, ss. 4–12 (apprentices), 19, 21 (reports of crew), 32 (deserters, absentees, &c.); 45–47 and 50 & 51 Vict. c. 4, s. 5 (inquiries and disputes).

(*c*) 17 & 18 Vict. c. 104, s. 127, as affected by 55 & 56 Vict. c. 19, sched. A table of fees payable at Mercantile Marine offices is required by the Board of Trade to be kept conspicuously posted there.

(*d*) 17 & 18 Vict. c. 104, s. 128. See also 36 & 37 Vict. c. 85, s. 10; § 6, *supra*.

(*e*) *Ibid.*, s. 129.

(*f*) *Ibid.*, s. 130.

(*g*) 24 & 25 Vict. c. 96, s. 68.

(*h*) 25 & 26 Vict. c. 63, s. 16, *q.v.* as to the form of the indictment.

by him, or fraudulently withholds, retains, or keeps back the same or any part thereof contrary to any lawful directions or instructions which he is required to obey in relation to such office or service, is deemed guilty of embezzlement within the meaning of that statute; and is liable on conviction to the same pains and penalties as are thereby imposed upon any clerk or servant for embezzlement.(*h*)

Naval Courts on the High Seas and Abroad.(*i*)

Naval Courts may be summoned for hearing complaints, and investigating wrecks on the high seas or abroad.

§ 9. By "The Merchant Shipping Act, 1854," a Court called a "Naval Court," with extensive powers as regards both master and seamen, may be summoned by any officer in command of any ship of Her Majesty on any foreign station, or, in the absence of such officer, by any consular officer, in any of the following cases, viz.:

(1) Whenever a complaint which appears to such officer to require immediate investigation is made to him by the master of any British ship, or by any certificated mate, or by one or more of the seamen belonging to any such ship:

(2) Whenever the interest of the owner of any British ship or of the cargo of any such ship appears to such officer to require it:

(3) Whenever any British ship is wrecked or abandoned or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrives at such place.(*k*)

Constitution of such Courts.

§ 10. Every such Court must consist of not more than five and not less than three members, of whom, if possible, one must be an officer in the Royal Navy not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest, either officers in the Royal Navy, masters of British merchant ships, or British merchants. Such a Court may include the person who summoned it, but not the master or consignee of the ship to which the parties complaining or complained against belong; and the naval or consular officer, if only one, in such Court, or, if more than one, the naval or consular officer who, according to any regulations in force for settling their respective ranks is of the highest rank, is the president of the Court.(*l*)

General functions and mode of action of such Courts.

It is the duty of the Court to hear and investigate the matter brought before it, and it may for that purpose summon and compel the attendance of parties and witnesses, administer oaths,

(*h*) See this note on p. 5.

(*i*) The sections of the Merchant Shipping Act, 1854, referred to in the following §§, apply to all ships registered in the Queen's dominions, when out of the jurisdiction of their respective governments, 17 & 18 Vict. c. 104, s. 109: *infra* § 485, note (*e*).

(*k*) 17 & 18 Vict. c. 104, s. 260.

(*l*) *Ibid.*, s. 261.

and order the production of documents. The investigation must be so conducted as to give any person against whom any charge is made an opportunity of making a defence.(*m*)

§ 11. After hearing the case the Court may exercise the following powers:

Powers of such Courts:

(1) It may, if unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires it, supersede the master, [and in such case may also cancel or suspend his certificate (*n*)], and may appoint another person to act in his stead; but no such appointment shall be made without the consent of the consignee of the ship, if then at the place:

To supersede the master:

(2) It may discharge any seaman from his ship:

To discharge a seaman:

(3) It may order the wages of any seaman so discharged or any part of such wages to be forfeited, and may direct the same either to be retained by way of compensation to the owner, or to be paid into the receipt of Her Majesty's Exchequer in the same manner as other penalties and forfeitures under this Act:

To forfeit wages:

(4) It may decide any questions as to wages, or fines, or forfeitures, arising between any of the parties to the proceedings:

To decide disputes as to wages, &c.

(5) It may direct that all or any of the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance whilst so imprisoned, shall be paid out of and deducted from the wages of such seaman or apprentice, whether then or subsequently earned:

To direct costs of imprisonment to be paid out of wages.

(6) It may exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as are by this Act given to British consular officers:

To send home offenders for trial.

(7) It may order the cost of the proceeding before it (if any), or any portion thereof, to be paid by any of the parties thereto, and may order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay caused thereby; and any cost or compensation so ordered shall be paid by such person accordingly, and may be recovered in the same manner in which the wages of seamen are recoverable, or may, if the case admits, be deducted from his wages.(*o*)

To order payment of costs, &c.

§ 12. The Court also has power if summoned to hear any complaint touching the conduct of the master, or any of the crew of any ship—

To try master and crew for offences.

"to try the said master or any of the said crew for any offences against the Merchant Shipping Act 1854, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by order duly made to inflict the same punishment for such offences, which two justices might, in the case aforesaid, inflict upon summary conviction, provided that in cases where an offender is sentenced to imprisonment, the sentence shall be confirmed in writing by the senior naval or consular officer present at the place where the court is held, and the place of imprisonment, whether on land or on board ship, shall be approved by him as a proper place for the purpose,

(*m*) 17 & 18 Vict. c. 104, s. 262.
(*n*) *Ibid.*, s. 242; 25 & 26 Vict. c. 63, s. 23, § 54 *infra*.
(*o*) 17 & 18 Vict. c. 104, s. 263.

and copies of all sentences made by any Naval Court summoned to hear any such complaint as aforesaid shall be sent to the commander-in-chief or senior naval officer of the station."(*p*)

All orders duly made by the Court under the foregoing powers will in any subsequent legal proceedings be deemed conclusive as to the rights of the parties.(*q*)

Orders to be entered in official log.

§ 13. All orders made by Naval Court are required whenever practicable, to be entered in the official log book of the ship to which the parties to the proceedings belong, and to be signed by the president of the Court.(*r*)

Report to be made of proceedings of Naval Courts.

The Court is also required to make a report to the Board of Trade, containing the following particulars:

(1) A statement of the proceedings, with the order made by the Court, and a report of the evidence:

(2) An account of the wages of any seaman or apprentice who is discharged from his ship by such Court:

(3) If summoned in order to inquire into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of such wreck or abandonment, with such remarks on the conduct of the master and crew as the circumstances require:

The report must be signed by the president of the Court, and every document purporting to be such a report so signed, if produced out of the custody of some officer of the Board of Trade, is deemed to be such a report, unless the contrary is proved, and is receivable in evidence.(*s*)

Penalty for preventing complaint or obstructing investigation.

§ 14. Any person who wilfully and without due cause prevents or obstructs the making of any complaint as above mentioned, or the conduct of any case or investigation by any Naval Court renders himself liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for any period not exceeding twelve weeks.(*t*)

(*p*) 18 & 19 Vict. c. 91, s. 18.
(*q*) 17 & 18 Vict. c. 104, s. 263.
(*r*) *Ibid.*, s. 264.
(*s*) *Ibid.*, s. 265.
(*t*) *Ibid.*, s. 267.

CHAPTER II.

THE APPOINTMENT, ETC., OF THE MASTER.

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Who may Appoint or Succeed him, and how Long his Authority continues.

The ship-owners appoint.

§ 15. THE owners of a merchant ship seldom navigate it themselves. They generally entrust the management of it to an agent, who is called the master or captain of the ship. They often appoint a part owner to be the master. In the former case, he is the confidential servant or agent of the owner or owners who employ him; in the latter he is the agent of his co-owners. In either case, he has a general authority to act for those who employ him.(*a*)

According to majority of interest.

The right of appointing the master of a ship is vested in the owner, or if there be more than one owner, then in the majority. But this majority is calculated, not by the number of the owners, but by the amount of their interest in the ship.(*b*) So that the

(*a*) Abbott, 13th ed. 119, per Bayley, J., *Webster* v. *Seekamp*, 4 B. & Ald. at p. 354.

(*b*) Molloy, b. 2, c. 1, s. 4; 1 Maude and Pollock, 4th ed. p. 119.

majority which appoints, is a majority of interest and not of numbers.

Duty of owners in selection.

§ 16. In appointing to an office of such importance, the owners, or those of them, with whom the appointment lies, being usually a majority in interest, are bound, by a regard to their own advantage, and much more by their duty to others, to select him with care, and to exercise a free and impartial judgment in such selection.(*c*) They "ought not to appoint a man upon whose compliance with their orders and on whose prudence and discretion they cannot rely."(*d*) Any contract which is calculated to have the effect of fettering the judgment of those who have to select, and of binding them to concur in the nomination of particular persons, at the peril of an action, is a violation of that duty which is owing not only to the charterers, if any, and other part owners of the ship, but also to all whose life or property may be embarked in her, and is illegal and void.(*e*)

Effects of change of ownership;

§ 17. If after a master has been appointed by the owners, a change of ownership in the ship takes place, either by sale or otherwise, the master retains whatever authority he possessed under such appointment, until he receives notice that the ownership is changed, and that his previous instructions, authority, or appointment are at an end. And he may, until he receives such notice, bind the new owners by contracts for the carriage of goods entered into by him pursuant to his original instructions.(*f*)

Appointment of new master abroad.

§ 18. Sometimes it becomes necessary for the prosecution of the voyage, when the ship is in foreign ports, where it is impossible to communicate with the owners, either to appoint a master or to substitute a new master for the one who was appointed by the owners. The validity of such a transaction depends upon the fulfilment of two conditions: viz., first, it must be necessary; and secondly, it must be perfectly *bonâ fide*. The person, whose place and functions naturally point him out as the successor of the master, is the mate. But although it may be ground for suspicion if he is passed over, still that alone is not a ground for impeaching the appointment of another person.(*g*)

By whom such appointment may be made abroad.

The appointment of a master abroad has been sustained when made by the agent of the owner;(*h*) by the consignees (*i*) of the cargo; by the consignor of the cargo; by the furnishers of the

(*c*) Per Dr. Lushington, *The Blake*, 1 W. Rob. at p. 76.

(*d*) Per Bayley, J., *Webster* v. *Seekamp*, 4 B. & Ald. 354.

(*e*) *Card* v. *Hope*, 2 B. & C. 661, 674; Maclachlan, 4th ed. 135.

(*f*) *The Mercantile, &c., Bank* v. *Gladstone*, L. R. 3 Ex. 233, see per Kelly, C. B. at p. 238.

(*g*) Maclachlan, 4th ed. 172.

(*h*) *The Kennersley Castle*, 3 Hagg. 1.

(*i*) *The Alexander*, Tate, 1 Dods. 278; *The Rubicon*, 3 Hagg. 9.

homeward cargo;(*k*) by a foreign merchant, to whom the prior master had committed the vessel as agent for the owners;(*l*) by the British consul or vice-consul at the port;(*m*) or by a captain of the Royal Navy in actual command at the station.(*n*) After notice of abandonment as for a total loss, the underwriters or their agent may appoint if they act for the best for all interests.(*o*) And in a foreign port, in cases of necessity or sudden emergency in the absence of the owner or employer, or of his authorized agent, whenever it may be necessary and proper for the welfare of the ship and the due accomplishment of the voyage, and where no communication can be held with the owners or employers or their agent, the master possesses the power, if he should be disabled by illness or otherwise, to appoint a new master to serve in his stead, whose acts under such circumstances will become obligatory upon the owners.(*p*)

When mate succeeds to command.

§ 19. If the master of the ship dies or deserts the ship at sea, or if any particular circumstance occurs, such as insanity, that renders the master utterly incompetent to discharge his duties, then both as a matter of law, and from the necessity of the case, the first mate becomes master, and is entitled to be paid as such, and is empowered to appoint the other officers of the ship, to make all the necessary arrangements for navigating her, and to appoint an able seaman to be second mate, and to bind the owners by an agreement to pay him wages as second mate.(*q*)

§ 20. The following instances will serve to show under what kind of circumstances the court has upheld appointments of new masters in foreign ports:—

Instances of appointments abroad.

In *The Alexander* (*r*) the ship, being bound for Pernambuco, had got into a place 300 miles from her destination, in a state which required assistance. This was rendered by the consignees at the port of destination. After the ship's arrival there the master deserted, and the consignees appointed another in his place, and, having incurred further expense on account of the ship, took a bottomry bond from him for their advances, and Lord Stowell upheld the validity of the appointment.

In *The Zodiac*,(*s*) the ship was in a foreign port, the master had died at sea, the mate was unequal to the duties of master, and anxious to be relieved of them, and there was no person

(*k*) *The Rubicon*, 3 Hagg. 9.
(*l*) *The Tartar*, 1 Hagg. 1.
(*m*) *The Zodiac*, 1 Hagg. 320. *The Cynthia*, 16 Jur. 748.
(*n*) *The Eliza Cornish* (otherwise *Segredo*), 1 Spks. Ec. & Ad. 36.
(*o*) *The Kennersley Castle*, 3 Hagg. at p. 6.
(*p*) Story on Agency, 36, 120.
(*q*) *Hanson* v. *Roydon*, L. R. 3 C. P. 47, 49; *The Tecumseh*, 3 W. Rob. 144, 146; *The Favourite*, 2 C. Rob. 223, 237.
(*r*) 1 Dods. 278.
(*s*) 1 Hagg. 320.

authorized to take charge of the ship or cargo at the port. The British Consul appointed a master, and the appointment was upheld.

In *The Cynthia*,(*t*) the British Vice-Consul, at a foreign port to which the ship had come after the master and crew had been murdered in a mutiny, appointed a master, and the appointment was upheld in this country.

In *The Eliza Cornish*,(*u*) the ship, with a valuable cargo on board, had touched at a point in the Straits of Magellan, and was there forcibly seized by the inhabitants of a penal colony, who murdered the master. She was recovered from their hands, with her cargo, by one of Her Majesty's ships, the captain of which appointed an officer of the Royal Navy as master, to carry the vessel to England. In the course of the voyage he sold her, under alleged necessity, at the port of Fayal. The Court, while pronouncing against the validity of the sale, sustained the appointment of the master, notwithstanding the mate had survived, and was on board the ship.

The powers of removal and appointment possessed by Admiralty Courts and Naval Courts are referred to below.

Who may Remove him.

Wishes of majority of owners enforced by Admiralty Court.

§ 21. As a general rule, the right to remove the master is vested in, and may be exercised by, those who had the right of appointment. In the absence of an agreement to the contrary, or of very unusual circumstances, he is entitled to reasonable notice before dismissal; and it seems that, conversely, he is bound to give reasonable notice to the owners before resigning his command.(*x*) Where he seeks to retain possession of the ship against the will of the owners, proceedings may be taken in the Admiralty Division of the High Court of Justice (*y*) for the purpose of dispossessing him. In such cases, if the master is not a part owner, all that the Court requires is that the majority of owners should declare their disinclination to continue him in possession; but if he is a part owner, some special reason for dispossessing him—*e.g.* irregularity in his accounts with his owners—should be shewn.(*z*) It is not competent to the master to dispute the title of the registered owners, and allege that it is in other persons.(*a*) But, although in the case of ships belonging to British subjects the Court will order the master to deliver up

(*t*) 16 Jur. 748.

(*u*) Otherwise *Segredo*, 1 Spks. Ec. & Ad. 36.

(*x*) *Creen* v. *Wright*, 1 C. P. D. 591.

(*y*) So called since the Judicature Acts came into operation (Nov. 1875). The terms Court of Admiralty, and Admiralty Court are frequently used in this work for the sake of brevity.

(*z*) *The New Draper*, 4 C. Rob. 287.

(*a*) *The Windsor Castle*, 1 N. of C. 118.

possession, on the application of a majority of owners, without entering very minutely into the causes of their dissatisfaction,(*b*) it will not in general so interfere between foreigners, without the consent of parties or the authority of the representative of the foreign State. A decree of a competent Court of such State has been held to give such authority.(*c*)

§ 22. In addition to the jurisdiction just referred to, the Admiralty Court has been entrusted with statutory powers of removing and appointing masters as follows :—

Power of Admiralty Courts to remove master and appoint a new master.

Any Court having Admiralty jurisdiction in any of Her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part-owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly, and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs in the matter as it thinks fit.(*d*)

An attempt by the master to defraud constitutes such a necessity for removal as would induce the Court to act under this section. The power of the Court under this section is not limited to the class of cases enumerated in sect. 239. It will be exercised on the application of one part-owner only, although another part-owner, the ship's husband, has refused to discharge the master.(*e*)

Of Naval Court.

So a Naval Court may in some cases, as we have seen, supersede the master and, with the consent of the consignee of the ship, if then at the place, appoint another.(*f*)

His Qualifications.

Nature of his office and duties.

§ 23. The master of a ship is entrusted with the care of the ship and cargo and of the life and health of the passengers and crew; he is required to conduct the navigation with skill, to behave in his command with justice, temper and consideration, and to act with prudence and judgment in all the affairs of the owners and charterers.(*g*)

He is an officer to whom great powers, momentous interests,

(*b*) The *See Reuter*, 1 Dods. 22; *The Windsor Castle, ubi sup.*

(*c*) The *See Reuter, ubi sup.*

(*d*) 17 & 18 Vict. c. 104, s. 240. As to when and by whom the master's certificate may be dealt with, see §§ 42—59 *infra.*

(*e*) *The Royalist*, B. & L. 46.

(*f*) 17 & 18 Vict. c. 104, s. 263 (1): see § 14 *supra.*

(*g*) Maclachlan, 4th ed. p. 134.

and a very large discretion are necessarily entrusted, in order to enable him to meet the unforeseen and sudden vicissitudes of the voyage. His authority at sea is necessarily summary and often absolute. If he exercise that authority in an intemperate or oppressive manner, he can seldom be resisted or checked by either moral or physical force. He is often called upon to act in sudden and terrible emergences, when far from the owners of the ship and from the owners of the cargo, and when the fate, not only of the ship and cargo, but also of the crew and passengers, depends upon his decision. It is therefore necessary that he should be a person of experience and practical skill, and that he should be thoroughly instructed in the science of navigation. To enable him to act with confidence in situations of peril or of difficulty, he ought to know the extent of his legal powers and liabilities, and how far he may venture to act for the owners of the ship and of the cargo.(*h*)

Provisions for insuring competency.

§ 24. In many maritime countries there have long existed laws and regulations intended to ensure, as far as practicable, that a master of a ship, who is necessarily entrusted with such great powers and interests, and who is constantly called upon to act under circumstances of such instant and unforeseen danger and difficulty, should be a person possessing all the qualifications requisite for such a post.(*i*) But it is remarkable that in England, the greatest maritime State that the world has ever seen, no proper precautions were taken before the year 1850 to protect the public from the appointment of ignorant and untrustworthy men to these important posts, in which property and life are committed to them under circumstances which necessarily confer almost absolute power, and at the same time preclude for long periods the possibility of any supervision. In that year a system of examination was first established by "The Mercantile Marine Act."(*k*)

When masters' certificates first required by law.

Present enactment.

That statute was afterwards repealed, and now by "The Merchant Shipping Act," 1854,(*l*) provisions are made for giving certificates of fitness to those who are found by testimonials and personal examination, to be qualified by previous good conduct, ability, skill and knowledge for such a position. Under that Act,(*m*) as we shall presently see, "no foreign-going ship, or home-trade

(*h*) 3 Kent's Com. 159, 160.

(*i*) The French ordinances of 1584, 1681, and 1725, and the ordinances of the Hanse Towns, of Bilboa, of Prussia, and Sweden, have all required the master to be previously examined and certified to be fit by his experience, capacity, and character. He was formerly, when trade was constantly exposed to lawless rapacity, required to possess military as well as ordinary nautical skill: omnibus privilegiis militaribus gaudet, 3 Kent, 160, note. Roccus de Navibus et Naulo, note 7. Emerigon, Traité des Ass. i. 192; Boulay-Paty, Cours de Droit Mar. i. 368, 376, 379.

(*k*) 13 & 14 Vict. c. 93.

(*l*) 17 & 18 Vict. c. 104, ss. 131—140.

(*m*) See ss. 134, 136, *infra* §§ 27, 29.

passenger ship," may go to sea from any port in the United Kingdom unless the master and mates have obtained certificates as specified in the 136th section.

It was formerly necessary, under 12 & 13 Vict. c. 29, s. 8, that in all cases the master of a British registered ship, wherever she was, should be a British subject. But that statute was repealed by "The Merchant Shipping Act, 1854,"(*n*) and the provisions of sect. 8 have not been re-enacted.

Examinations and Certificates of Masters, Mates, and Engineers.(*o*)

Certificates when necessary

§ 25. No "foreign-going ship or home trade passenger ship"(*p*) may proceed to sea from any port in the United Kingdom, unless the master(*q*) and mates have obtained the certificates specified in the 136th sect. of "The Merchant Shipping Act, 1854," which is given below, and every steamship which is required by that Act to have a certificated master, must also have a certificated engineer or engineers.(*r*)

Examination of masters and mates.

It is the duty of Local Marine Boards(*s*) to provide at their respective ports for the examination of applicants for certificates of competency as masters or mates;(*t*) and where there is no Local Marine Board, the Board of Trade is empowered to send the examiners or examiner of any Local Marine Board to the port in question, to examine the applicants there.(*u*) The examination of applicants for engineers' certificates are held under the direction of the Board of Trade.(*x*).

(*n*) 17 & 18 Vict. c. 104.

(*o*) Instructions as to these examinations are contained in memoranda "Exn. 1," "Exn. 1a," and "Exn. 1b," issued by the Board of Trade.

(*p*) "Foreign-going ship" includes every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits: the coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, Man, and the continent of Europe, between the river Elbe and Brest inclusive. "Home-trade ship" includes every ship employed in trading or going within the following limits: the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive. "Home-trade passenger ship" means every home-trade ship employed in carrying passengers. "Ship" includes "every description of vessel used in navigation not propelled by oars," 17 & 18 Vict. c. 104, s. 2. A vessel carrying passengers round an artificial lake is not "used in navigation." *Mayor, &c., of Southport* v. *Morriss* (1893), 1 Q. B. 359. Ships employed in the whale, seal, and walrus fisheries, and ships which do not belong to ports in Canada or Newfoundland, engaged in the Newfoundland cod fisheries are deemed to be foreign-going ships. 46 & 47 Vict. c. 41, s. 53.

(*q*) The term "master" includes "every person (except a pilot) having command or charge of any ship," 17 & 18 Vict. c. 104, s. 2.

(*r*) 25 & 26 Vict. c. 63, s. 5, *infra* § 36.

(*s*) 17 & 18 Vict. c. 104, s. 131.

(*t*) Provisions have also been made with respect to certificates for skippers and second hands of fishing boats. No fishing boat may go to sea without a certificated skipper, and no trawler above twenty-five tons without a certificated second hand as well. The provisions of the Merchant Shipping Acts with regard to certificates of competency, the examination for, and granting and suspension of them, are applied to certificates for the sea fishing service. See 46 & 47 Vict. c. 41, ss. 36—42; 50 & 51 Vict. c. 4, ss. 7, 8, 9.

(*u*) 25 & 26 Vict. c. 63, s. 17.

(*x*) *Ibid.*, s. 6.

The provisions of the Acts as to these examinations and certificates form the subject of the following sections:—

§ 26. The Local Marine Boards are entrusted with the appointment of examiners to conduct the examination of applicants for masters' and mates' certificates, and with the regulation of the examinations; and members of the Local Marine Board of the place where the examination is held may be present and assist at the examination.(*y*)

Powers of Board of Trade over examinations.

The Board of Trade is empowered to lay down rules, which must be strictly adhered to by examiners, as to the conduct of the examinations and the qualifications of applicants. All examiners are required to have a certificate of qualification granted by the Board of Trade. The sanction of the Board is necessary as regards the number of examiners to be appointed, and the amount of their remuneration. It may at any time depute any of its officers to be present and assist at any examination; and if the examination for any two or more ports can in its judgment be conveniently conducted by the same examiners, it may require and authorise the local Marine Boards of such ports to act together as one Board in providing for and regulating examinations and appointing and removing examiners.(*z*)

Examinations at ports where there are no Local Marine Boards.

A later enactment enables the Board of Trade, if satisfied that serious inconvenience exists at any port in consequence of the distance which applicants have to travel in order to be examined, to send, with the concurrence of any Local Marine Board, such Board's examiners to the port where the inconvenience exists, and thereupon examinations are held there in the same way as other examinations for certificates.(*a*) And, as we have seen, the Board of Trade may, in the absence of a Local Marine Board, exercise the powers of such a Board with respect to examinations for certificates.(*b*)

Fees to be paid by applicants for examination.

Applicants for examination are required to pay the fees directed by the Board of Trade, not exceeding the statutory limit,(*c*) to the persons appointed by the Board to receive them.(*d*)

Certificates of competency to be granted to those who pass.

§ 27. Every applicant who is duly reported by the local examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board ship, is entitled to receive from the Board of Trade a certificate (called a "certificate of competency") to the effect that he is competent to act as master, or as

(*y*) 17 & 18 Vict. c. 104, s. 131.
(*z*) *Ibid.*, s. 132.
(*a*) 25 & 26 Vict. c. 63, s. 17.
(*b*) 36 & 37 Vict. c. 85, s. 10, *supra* § 4, note (*x*).
(*c*) That is to say, for a master's certificate £2, and for a mate's £1. See § 6, note (*c*), *supra*.
(*d*) 17 & 18 Vict. c. 104, s. 133.

first, second, or only mate of a foreign-going ship, or as master or mate of a home-trade passenger ship, as the case may be: provided that if in any case the Board has reason to believe such report to have been unduly made, it may remit the case either to the same or to any other examiners, and require a re-examination of the applicant, or a further inquiry into his testimonials and character, before granting him a certificate. (*e*)

Certificates of service.

§ 28. Persons who before January 1, 1851, served as masters or mates in the British Merchant Service, or attained a certain rank in Her Majesty's Service or that of the East India Company, are entitled to certificates of service differing in form from certificates of competency, and appropriate to the position in which they served, for foreign-going ships; and persons who, before January 1, 1854, served as masters or mates in home-trade passenger ships are entitled to the like certificates of service for such ships.(*f*)

§ 29. The possession of certificates by masters and mates is enforced in the following terms:—

No foreign-going ship or home-trade passenger ship to proceed to sea without certificates of the master and mates.

No foreign-going ship or home-trade passenger ship shall go to sea from any port in the United Kingdom unless the master thereof, and in the case of a foreign-going ship the first and second mates or only mate (as the case may be), and in the case of a home-trade passenger ship the first or only mate (as the case may be), have obtained and possess valid certificates either of competency or service appropriate to their several stations in such ship, or of a higher grade; and no such ship, if of one hundred tons burden or upwards, shall go to sea as aforesaid, unless at least one officer besides the master has obtained and possesses a valid certificate appropriate to the grade of only mate therein or to a higher grade; and every person who, having been engaged to serve as master or as first or second or only mate of any foreign-going ship, or as master or first or only mate of a home-trade passenger ship, goes to sea as aforesaid as such master or mate without being at the time entitled to and possessed of such a certificate as hereinbefore required, or who employs any person as master, or first, second, or only mate of any foreign-going ship, or as master or first or only mate of a home-trade passenger ship, without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence incur a penalty not exceeding fifty pounds.(*g*)

Certificates for foreign-going ships available for home-trade passenger ships.

A certificate of competency for a foreign-going ship is deemed to be of a higher grade than the corresponding certificate for a home-trade passenger ship, and entitles the holder to go to sea in the corresponding grade in such last-mentioned ship; but a certificate for a home-trade passenger ship is not available for a foreign-going ship.(*h*)

The Registrar to record grants, cancellations, &c., of certificates.

§ 30. All certificates, whether of competency or service, are required to be in duplicate, one part being delivered to the

(*e*) 17 & 18 Vict. c. 104, s. 134.
(*f*) *Ibid.*, s. 135.
(*g*) 17 & 18 Vict. c. 104, s. 136.
(*h*) *Ibid.*, s. 137.

person entitled to the certificate. The other part is kept and recorded by the Registrar-General of Seamen, or other person appointed by the Board of Trade for the purpose, to whom the Board of Trade is required to give immediate notice of all orders made by it for cancelling, suspending, altering, or otherwise affecting the certificate, such Registrar or other person being required to make a corresponding entry in the record of certificates. Copies of certificates and of such entries purporting to be certified by the Registrar or other proper officer are *primâ facie* evidence of their contents.(*i*)

Duplicates and entries to be evidence.

In case of loss a copy to be granted.

§ 31. A master or mate who satisfies the Board of Trade that he has, without fault on his part, lost or been deprived of his certificate, may require upon payment of the prescribed fee, a copy of the certificate to which, by the record, he appears to be entitled, to be made out and certified as above mentioned, and delivered to him; and a copy purporting to be so made and certified has all the effect of the original.(*k*)

Production of certificates.

§ 32. The master of every foreign-going ship is required to produce his own and his mates' and engineers' (if any) certificates to a superintendent of Mercantile Marine offices on signing the agreement with his crew; or, in case of a running agreement, before the second and every subsequent voyage made after its first commencement. In the case of home-trade passenger ships, the certificates of the master, mate, and engineer (if any) are required to be produced to a superintendent within twenty-one days after the 30th of June and the 31st of December in each year.(*l*)

Pilotage Certificates for Masters and Mates.

Pilotage certificates.

§ 33. In addition to the before-mentioned certificates, the master ought to take care to obtain the proper pilotage certificate for himself and his mate. He should be so familiar with the waters and dangers of the navigation of and adjoining to the port to which his ship belongs, as to be able to pilot his own ship while therein without having a licensed pilot on board. But, as will be seen hereafter, when we treat of pilots,(*m*) he cannot legally do this unless he or his mate be possessed of a pilot's certificate from the pilotage authority of the district.

In order to obtain such a certificate, the master or mate of any ship may, upon giving due notice, and consenting to pay the

(*i*) 17 & 18 Vict. c. 104, s. 138. See 46 & 47 Vict. c. 41, s. 41, as to a register of certificates of skippers and second hands of fishing boats.

(*k*) 17 & 18 Vict. c. 104, s. 139. In the case of Colonial certificates (§ 40, *infra*), the authority granting the certificate, is for the purposes of this section substituted for the Board of Trade. See O. in C., May 9, 1891.

(*l*) 17 & 18 Vict. c. 104, ss. 161, 162; 25 & 26 Vict. c. 63, s. 10; as to engineers, *infra*, §§ 36–39.

(*m*) *Infra*, Chap. XII.

usual expenses, apply to any pilotage authority (*n*) to be examined as to his capacity to pilot his ship, or any one or more ships belonging to the same owner, within any part of the district over which the authority has jurisdiction; he will then, if the authority thinks fit, be examined; and if found competent a pilotage certificate will be granted to him, containing his name, and specifying the ship or ships in respect of which he has been examined, and the limits within which he is to pilot the same. Such a certificate enables the applicant to pilot any ship so specified of which he is acting as master or mate at the time, but no other, within the prescribed limits, without incurring any penalties for not employing a qualified pilot.(*o*) It remains in force for one year only, unless renewed by indorsement of the secretary or other proper officer of the authority by whom it was granted.(*p*)

Master or mate, if examined and passed, to receive a pilotage certificate enabling him to pilot particular ships.

Renewal of pilotage certificate.

If the Board of Trade is satisfied that a pilotage authority has, without reasonable cause, refused or neglected to examine a master or mate, or to grant him a pilotage certificate after he has passed his examination, or that his examination has been unfairly or improperly conducted, or that any terms imposed or sought to be imposed are unfair or improper, or that any pilotage certificate has been improperly withdrawn, it may appoint persons to examine such master or mate, and if he is found competent may grant him a pilotage certificate, containing the particulars above mentioned, upon such terms and conditions, and subject to such regulations, as the Board may think fit. Such a certificate has the same effect as if it had been granted by a pilotage authority. It remains in force for one year, and may be renewed by indorsement either by such person as the Board of Trade may appoint for the purpose, or by the secretary or officer of the pilotage authority.(*q*)

Board of Trade to examine and grant pilotage certificates to mates, on pilotage authorities refusing to do so.

Certain fees, fixed by the pilotage authority with the consent of the Board of Trade, or in the case of certificates granted or renewed by the Board, then fixed by itself, are payable on the

Fees to be paid upon such certificates and the renewals thereof.

(*n*) "Pilotage authority" includes all bodies and persons authorised to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage. 17 & 18 Vict. c. 104, s. 2.

(*o*) 17 & 18 Vict. c. 104, s. 340. The master of a ship applied for a pilotage certificate, purporting to enable him to pilot his ship within certain waters, and submitted to the required examination. The certificate was signed and sealed by the pilotage authority, and was lying in the office to be called for by the master, but he had not applied for it, and was ignorant that it was ready and would be given him on application. It was held, that the certificate was not granted to the master, nor possessed by him, within 17 & 18 Vict. c. 104, ss. 340–353, so as to enable him to pilot his ship in the specified waters. The master should have the certificate ready to produce, so as to assure a licensed pilot offering his services that the ship is exempt from compulsory pilotage. *The Killarney*, Lush, 202.

(*p*) *Ibid.*, s. 341. Renewal is discretionary; the pilotage authority is not bound to renew without re-examination, *Reg.* v. *Trinity House*, 35 W. R. 835.

(*q*) *Ibid.*, s. 342.

granting and renewal of pilotage certificates to masters and mates. These fees are applicable to the expenses and charges of and incidental to the examinations, and the preparation and renewal of the certificates, and the surplus, if any, to the pilots' superannuation fund, or otherwise for the benefit of the qualified pilots of the port or district, as the authority, or, as the case may be, the Board of Trade, thinks fit.(*r*)

Pilotage certificates for "home-trade passenger ships."

§ 34. The Merchant Shipping Act, 1854, also contains (*s*) provision for the granting and renewal by the Board of Trade of pilotage certificates to masters and mates of "home-trade passenger ships," for which in all pilotage districts pilotage is compulsory.(*t*) Such a certificate may be granted, either upon proof that the applicant continuously piloted any ship within the limits of a pilotage district for two years prior to the 1st of May, 1855, or upon examination, or otherwise, as the Board may deem expedient. It enables the master or mate to conduct any ship specified in it, within the limits it describes. Fees not exceeding the fees payable on examination for a certificate of competency,(*u*) and applicable by the Board in the same way, are payable to the Board on applying for such a pilotage certificate.

Power to withdraw pilotage certificates.

§ 35. The Board of Trade, or a pilotage authority, if satisfied that any master or mate to whom a pilotage certificate has been granted by either of them respectively, has been guilty of misconduct, or has shown himself incompetent to pilot his ship, may withdraw his certificate, which ceases thenceforth to be of any effect.(*x*)

Appeal.

A right of appeal to the County Court judge or the stipendiary magistrate has been conferred upon pilots aggrieved by decisions of pilotage authorities with respect, *inter alia*, to the suspension or revocation of licenses.(*y*) It may be doubted whether this provision confers any right of appeal on masters or mates in case of withdrawal of pilotage certificates. In cases, however, of the improper withdrawal of a certificate granted by a pilotage authority, it is open to the holder to apply to the Board of Trade for a new certificate, under sect. 342 of the Merchant Shipping Act, 1854.(*z*)

Examinations and Certificates of Engineers.

§ 36. If the master command a "foreign-going steamship," or a "sea-going home-trade passenger steamship," he must take care that he has an engineer or engineers who possess certificates according to the following regulations, or he may render himself liable to penalties.

(*r*) 17 & 18 Vict., c. 104, s. 343; 52 & 53 Vict. c. 69, ss. 8, 14.
(*s*) *Ibid.*, s. 355. See *The Earl of Auckland*, Lush, 164, 387.
(*t*) *Ibid.*, s. 54.
(*u*) *Ibid.*, s. 133; *supra* § 26.
(*x*) *Ibid.*, s. 344.
(*y*) 52 & 53 Vict. c. 69, s. 4.
(*z*) *Supra*, § 33.

Every steamship which is required to have a master possessing a certificate from the Board of Trade must also have an engineer or engineers certificated by the Board of Trade. The provisions on this subject are as follows:—

Steamships to carry certificated engineers.

(1) Engineers' certificates shall be of two grades, viz., "First-class engineers' certificates," and "Second-class engineers' certificates":

(2) Every foreign-going steamship of one hundred nominal horse power or upwards shall have as its first and second engineers two certificated engineers, the first possessing a "First-class engineer's certificate," and the second possessing a "Second-class engineer's certificate" or a certificate of the higher grade:

(3) Every foreign-going steamship of less than one hundred nominal horse power shall have as its only or first engineer an engineer possessing a "Second-class engineer's certificate" or a certificate of the higher grade:

(4) Every sea-going home-trade passenger steamship shall have as its only or first engineer an engineer possessing a "Second-class engineer's certificate" or a certificate of the higher grade:

(5) Every person who, having been engaged to serve in any of the above capacities in any such steamship as aforesaid, goes to sea in that capacity without being at the time entitled to and possessed of such certificate as is required by this section, and every person who employs any person in any of the above capacities in such ship without ascertaining that he is at the time entitled to and possessed of such certificate as is required by this section, shall for each such offence incur a penalty not exceeding fifty pounds.(*a*)

Examinations for engineers' certificates of competency.

§ 37. The duty of holding examinations for engineers' certificates of competency; of appointing, removing, awarding remuneration to examiners; of laying down rules as to the qualifications of applicants, and as to the times and places of examination, with other incidental duties, is imposed on the Board of Trade.(*b*) Such fees as the Board directs, not exceeding the prescribed limit,(*c*) are payable by the applicants.(*d*) These fees are carried to the Mercantile Marine Fund, on which the salaries of the Examining Surveyors are charged.(*e*) And every applicant who is duly reported to have passed the examination satisfactorily, and to have given satisfactory evidence of sobriety, experience, and ability, is entitled to receive from the Board a certificate of competency as first or second-class engineer, as the case may be.(*f*)

Fees to be paid by applicants.

Certificates of competency to be granted to those who pass.

Engineers' certificates of service to be delivered on proof of certain service.

§ 38. Persons who before the 1st of April, 1862, served as first engineer in a foreign-going steam-ship of not less than 100-h.p. nominal, or attained the rank of engineer in the service of Her Majesty, or of the East India Company, are entitled to a "first-class engineer's certificate of service," differing in form from a

(*a*) 25 & 26 Vict. c. 63, s. 5.
(*b*) *Ibid.*, s. 6.
(*c*) For a first-class engineer's certificate, £2; for a second-class engineer's, £1. *Ibid.*, Sched. Table B.
(*d*) 25 & 26 Vict. c. 63, s. 7.
(*e*) 50 & 51 Vict. c. 62, s. 2; 45 & 46 Vict. c. 55, s. 3.
(*f*) 25 & 26 Vict. c. 63, s. 8.

certificate of competency; and, similarly, persons who before that date served as second engineer in a foreign-going steam-ship of not less than 100-h.p. nominal, or as first or only engineer in any other steam-ship, or attained the rank of first-class assistant engineer in Her Majesty's Service, are entitled to a "second-class engineer's certificate of service." To obtain these certificates proof of the service and its length and nature, or of the rank, as the case may be, with particulars of name and time and place of birth, must be furnished to the Board of Trade.(*g*)

Registration and copies.

§ 39. The provisions (*h*) for registering masters' and mates' certificates, and orders cancelling or otherwise affecting them, and for keeping, and in case of loss supplying, copies; for production of certificates at certain times,(*i*) and for punishment of frauds respecting them,(*k*) apply equally to the certificates, whether of competency or service, granted to engineers.(*l*)

Examinations and Certificates (Colonial).

Colonial certificates to masters, mates, and engineers.

§ 40. Where the Legislature of any British possession provides for the examination of, and grant of certificates of competency to, persons intending to act as masters, mates, or engineers on board British ships, and the Board of Trade reports to Her Majesty that they are satisfied that the examinations are equally efficient with those for the same purpose in the United Kingdom, and that the certificates are so granted as to show the like qualifications and competency as those granted under the Merchant Shipping Acts, and are liable to be forfeited for the like reasons and in the like manner, Her Majesty is empowered, by Order in Council—(1) To declare such certificates of the same force as if granted under those Acts; and (2) that all or any of the provisions of those Acts which relate to certificates of competency granted thereunder shall apply to the certificates referred to in the Order; (3) To impose conditions and make regulations with respect to such certificates, and their use, issue, delivery, cancellation, and suspension, and to impose penalties not exceeding fifty pounds for the breach of such conditions and regulations. Upon publication in the *London Gazette* the provisions of the Order in Council take effect from the date mentioned therein. Any such order may be revoked by Her Majesty in Council.(*m*)

(*g*) 25 & 26 Vict. c. 63, s. 9.
(*h*) 17 & 18 Vict. c. 104, ss. 138, 139; *supra*, §§ 30, 31.
(*i*) *Ibid.*, ss. 161, 162; *supra* § 32.
(*k*) *Ibid.*, s. 140; *supra* § 41.
(*l*) 25 & 26 Vict. c. 63, s. 10.
(*m*) 32 & 33 Vict. c. 11, s. 8. An Order in Council of May 9th, 1891 (see *London Gaz.* May 15), is in force with reference to the following British Possessions:—Canada, Malta, Victoria, New Zealand, New South Wales, South Australia, Tasmania, Bengal, Newfoundland (as regards masters and mates only), Bombay, Queensland, Hong Kong, Straits Settlements, Mauritius (masters and mates only). Regulations are appended in a schedule to the Order. They provide, *inter*

Frauds respecting Certificates.

§ 41. Certain acts with respect to certificates are constituted misdemeanours, punishable by fine, or imprisonment with or without hard labour,(*n*) in the following terms:—

Every person who makes, or procures to be made, or assists in making, any false representation for the purposes of obtaining for himself or for any other persons a certificate, either of competency or service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate, or any official copy of any such certificate, or who fraudulently makes use of any such certificate or any copy of any such certificate which is forged, altered, cancelled, suspended, or to which he is not justly entitled, or who fraudulently lends his certificate to, or allows the same to be used by, any other person, shall for each offence be deemed guilty of a misdemeanour.(*o*)

Penalties for false representations:

For forging or altering or fraudulently using or lending any certificate.

Cancellation and Suspension of Certificates: Inquiries and Investigations.

§ 42. It will now be proper to consider the circumstances and conditions under which certificates of officers may be suspended or cancelled. The Board of Trade may suspend or cancel the certificate of any master, mate, or certificated engineer, if he is shewn to have been convicted of any offence.(*p*) And this power is also exercisable in numerous cases by the various courts and tribunals entrusted with the duty of inquiring into the conduct of officers, and the causes of wrecks and casualties.

Suspension or cancellation by Board of Trade.

Courts of Inquiry and Investigation.

§ 43. In the case of certain complaints, or of the wreck or abandonment of a British ship, Naval Courts may, as we have seen,(*q*) be constituted to investigate the matter, with power, if unanimous that the safety of the ship or crew, or the interest of the owners, requires it, to supersede the master, and to discharge any seaman.(*r*) The constitution of such Courts has been already explained, and need not be further discussed here.

Naval Courts.

§ 44. We have also seen (*s*) that in certain cases any Court having Admiralty jurisdiction in the Queen's dominions, may remove the master, if satisfied that his removal is necessary, and

Admiralty Courts.

alia, that the cancellation or suspension of a certificate shall extend to all the Colonial certificates possessed by the holder; and that no certificate may, subject to certain exceptions, be granted to a person who has had a certificate cancelled or suspended; and regulate the conditions under which cancelled or suspended certificates may be returned. This must in general be done by the authority which originally granted it.

(*n*) 17 & 18 Vict. c. 104, s. 518.

(*o*) *Ibid.*, s. 140: applied to engineers' certificates by 25 & 26 Vict. c. 63, s. 10.

(*p*) 17 & 18 Vict. c. 104, s. 242 (4); 25 & 26 Vict. c. 63, s. 23 (2).

(*q*) *Supra* §§ 9, 11, 22.

(*r*) 17 & 18 Vict. c. 104, ss. 260–263.

(*s*) *Supra* § 21.

with the consent of the owner, his agent, or the consignee, or in the absence of any such person without such consent, appoint a new master in his stead.(*t*)

Inquiries and formal investigations into wrecks and casualties.

§ 45. In addition to these Courts, tribunals specially constituted or adapted for the purpose have been entrusted, both in the United Kingdom and its dependencies, with the duty of inquiring into wrecks and casualties, and into charges of misconduct against certificated officers. The law relating to this subject is contained in numerous enactments. An attempt has been made in the following paragraphs to state it in a connected form.

Inquiries to be instituted in cases of wreck and casualty.

§ 46. In any of the cases following, viz. :—

Whenever any ship(*u*) is lost, abandoned, or materially damaged, or causes loss or material damage to any other ship on or near the coasts of the United Kingdom :

Whenever, by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues, and whenever any such loss, abandonment, damage, or casualty(*x*) happens elsewhere, and any competent witnesses arrive, or are found at any place in the United Kingdom, the inspecting officer of the Coastguard, or the principal officer of Customs residing at or near the place where the casualty occurred, or, as the case may be, the witnesses arrive or are found or can be conveniently examined, or any other person appointed for the purpose by the Board, is empowered to make inquiry respecting such loss, abandonment, damage, or casualty, and for that purpose has all the powers given by the first part of the Merchant Shipping Act, 1854,(*y*) to inspectors appointed by the Board.(*z*)

(*t*) 17 & 18 Vict. c. 104, s. 240.

(*u*) Ship includes "every description of vessel used in navigation not propelled by oars," 17 & 18 Vict. c. 104, s. 2. In the case of fishing boats, the superintendent of a mercantile marine office is empowered to inquire into the cause of death, injury, ill-treatment, or punishment of any member of the crew or person on board, and of any casualty to any fishing boat or boat belonging to her; and in certain cases to report to the Board of Trade, and if necessary to take immediate steps for bringing an offender to justice. 46 & 47 Vict. c. 41, s. 45.

(*x*) *I.e.* a casualty by reason of which loss of life ensues : *Ex p. Story*, 3 Q. B. D. 166.

(*y*) 17 & 18 Vict. c. 104, ss. 15, 16. These powers are—(1) to go on board any ship, and inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of the Acts apply, not unnecessarily detaining or delaying her from proceeding on any voyage ; (2) To enter and inspect any premises the entry or inspection of which appears to the inspector to be requisite for the purpose of the report which he is directed to make ; (3) To require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and to require answers or returns to any inquiries he thinks fit to make. See *R.* v. *Collingridge*, 34 L. J. Q. B. 9 ; *infra* § 51 ; (4) To require and enforce the production of all books, papers, or documents which he considers important for such purpose ; (5) To administer oaths, or, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination. (See *R.* v. *Tomlinson*, L. R. 2 C. C. 49 ; *infra*, § 51.) Persons refusing to attend as witnesses, after tender of their expenses, or to give

If it appears to him, either upon or without such preliminary inquiry, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he must apply to two justices or a stipendiary magistrate (*a*) to hear the case, and it then becomes the duty of such justices or magistrate to do so.(*b*) The investigation may be held at any place appointed by the Board of Trade,(*c*) subject to this, that it must be in a suitable place, such as a Town Hall, or Assize or County Court, to be determined according to General Rules, and not in general in a Police Court.(*d*) The Lord Chancellor is empowered to make General Rules for this purpose,(*d*) as well as for carrying into effect the enactments relating to investigations, and particularly with respect to the summoning of assessors, procedure, and some other kindred matters, including the amount and application of fees,(*e*) and the regulation of appeals.(*f*) Every investigation, however, must be so conducted as to give any person against whom a charge is made an opportunity of making a defence,(*e*) and in all cases where it is intended to ask the tribunal to pronounce as to the cancelling or suspension of a certificate, it is indispensable that a copy of the report or statement upon which the investigation is ordered should, before its commencement, be furnished to the owner of the certificate; otherwise, no order dealing with the certificate can be made.(*g*) Subject to General Rules and the above qualifications, the person or persons holding the investigation have the same powers of summoning parties and witnesses, and regulating the proceedings, as a court of summary jurisdiction,(*b*) and also power to award such costs as they deem just, which are recoverable in the same manner as costs of summary proceedings.(*h*) It is the duty of the person applying for the investigation to superintend the management of the case, and to render to the Court all the assistance in his power. At the conclusion of the case the Court is required to send a report to the Board of Trade, containing a full statement of the case, and of its opinion thereon, with the evidence,(*i*) and such observations as it thinks fit.(*b*) In the case of investigations to be held in Scotland, the Board of Trade is empowered to remit them to the Lord Advocate as he may direct.(*k*)

Formal investigation before justices.

General rules.

Conduct of proceedings.

Investigations in Scotland.

evidence, or to produce documents, or to make or subscribe declarations, are liable to a penalty of £10; and persons who wilfully impede an inspector in the performance of his duty, to a like penalty, and to seizure and detention until they can be taken before a justice of the peace.

(*z*) 17 & 18 Vict. c. 104, s. 432.

(*a*) See 17 & 18 Vict. c. 104, s. 435, and § 48 *infra*.

(*b*) 17 & 18 Vict. c. 104, s. 433. The Court may proceed with the inquiry, notwithstanding that the Board of Trade makes no charge: *Ex parte Minto*, 35 L. T. 808.

(*c*) 39 & 40 Vict. c. 80, s. 33.

(*d*) 42 & 43 Vict. c. 72 s. 3 (5).

(*e*) 39 & 40 Vict. c. 80, s. 30.

(*f*) 42 & 43 Vict. c. 72, s. 1 (3). See the current rules, Appx. No. 1.

(*g*) 25 & 26 Vict. c. 63, s. 23 (6).

(*h*) 17 & 18 Vict. c. 104, s. 436.

(*i*) 25 & 26 Vict. c. 63, s. 23.

(*k*) 17 & 18 Vict. c. 104, s. 437

Inquiry or formal investigation in certain other cases may be ordered by Board of Trade.

§ 47. The Board of Trade is also, in addition to its other powers, authorised to cause an inquiry to be made, or a formal investigation to be held as above-mentioned, whenever (1) any ship on or near the coasts of the United Kingdom, or any British ship elsewhere, has been stranded or damaged, and any witness is found in the United Kingdom; or (2) a British ship has, or is supposed to have, been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of; (*l*) and also whenever loss of life arises by reason of any casualty to or on board any boat belonging to a fishing vessel, all the provisions of the Merchant Shipping Acts and of the Shipping Casualties Investigation Act, 1879,(*m*) being in this case applicable.(*n*)

Fishing boats.

Wreck Commissioner.

§ 48. With a view of rendering investigations into shipping casualties more speedy and effectual, the Lord Chancellor is empowered to appoint and remove Wreck Commissioners, whose duty it is, at the request of the Board of Trade, to hold such investigations, with the same jurisdiction and powers as justices.(*o*) Only one such Commissioner has been appointed, no appointment having been made on his death.(*p*)

Skilled assessors.

§ 49. The authority holding a formal investigation is required in all cases to do so with the assistance of an assessor or assessors of nautical, engineering, or other special skill or knowledge, to be appointed in manner prescribed by general rules from a list of persons approved for the purpose by a Secretary of State;(*q*) and if the investigation involves, or appears likely to involve, any question as to the cancellation or suspension of a master's, mate's, or engineer's certificate, two at least of the assessors are required to be persons having experience in the merchant service. Each assessor is required either to sign the report made on the investigation, or to report to the Board of Trade the reason for his dissent;(*r*) and no certificate will be cancelled or suspended, unless one assessor at least expresses concurrence in the report.(*s*)

Where certificate to be dealt with assessors to have experience in merchant service.

Stipendiary magistrate to be the magistrate who is member of Local Marine Board, and to be paid.

§ 50. In places where there is a local Marine Board, and where a stipendiary magistrate is a member of such Board, investigations must, whenever he happens to be present, and when not held by a Wreck Commissioner, be made before such magistrate, who is

(*l*) 39 & 40 Vict. c. 80, s. 32; see note (*n*). As to the duty of the managing owner or ship's husband to give notice to the Board of Trade of the apprehended loss of a ship, see 36 & 37 Vict. c. 85, s. 22.

(*m*) 42 & 43 Vict. c. 72.

(*n*) 50 & 51 Vict. c. 4, s. 12. Neither this section nor sect. 32 has the effect of extending the jurisdiction to cancel or suspend certificates beyond the cases mentioned in 17 & 18 Vict. c. 104, ss. 242 (*infra*, § 52), and 432 (*supra*, § 46): *ex parte Story*, 3 Q. B. D. 166.

(*o*) 17 & 18 Vict. c. 104, s. 29.

(*p*) The late Mr. H. C. Rothery.

(*q*) The list remains in force for three years only, but persons entered therein may be approved for a subsequent list, 42 & 43 Vict. c. 72, s. 3 (1).

(*r*) 39 & 40 Vict. c. 80, s. 30.

(*s*) 25 & 26 Vict. c. 63, s. 23.

entitled to be paid out of the Mercantile Marine Fund in respect of his services under the Merchant Shipping Acts, such remuneration, whether by way of annual increase of salary or otherwise as the Home Secretary, with the consent of the Board of Trade, directs.(*t*)

§ 51. The foregoing summary relates to inquiries and investigations into shipping casualties: the following enactment provides for the investigation of charges of misconduct or incompetency against certificated officers.

Power to investigate cases of alleged incompetency and misconduct.

If the Board of Trade or any local Marine Board has reason to believe that any master [certificated engineer,(*u*)], or mate is from incompetency or misconduct unfit to discharge his duties, the Board of Trade may either institute an investigation or may direct the local Marine Board at or nearest to the place at which it may be convenient for the parties and witnesses to attend to institute the same, and thereupon such persons as the Board of Trade may appoint for the purpose, or, as the case may be, the local Marine Board, shall, with the assistance of a local stipendiary magistrate (if any), and if there is no such magistrate, of a competent legal assistant to be appointed by the Board of Trade, conduct the investigation, and may summon the master [certificated engineer (*u*)], or mate to appear, and shall give him full opportunity of making a defence either in person or otherwise,(*x*) and shall for the purpose of such investigation have all the powers given by the first part of this Act (*y*) to inspectors appointed by the Board of Trade, and may make such order with respect to the costs of such investigation as they may deem just; and shall on the conclusion of the investigation make a report upon the case to the Board of Trade; and in cases where there is no local Marine Board before which the parties and witnesses can conveniently attend, or where such local Marine Board is unwilling to institute the investigation, the Board of Trade may direct the same to be instituted before two justices or a stipendiary magistrate; and thereupon such investigation shall be conducted, and the results thereof reported, in the same manner and with the same powers in and with which formal investigations into wrecks and casualties are directed to be conducted, and the results thereof reported, under the provisions contained in the eighth part of this Act, save only that, if the Board of Trade so directs, the person bringing the charge of incompetency or misconduct to the notice of the Board of Trade shall be deemed to be the party having the conduct of the case.(*z*)

Cancelling and suspension of certificates.

§ 52. In the following cases the tribunal by which the case is investigated or tried, may suspend or cancel the certificate of any master, mate, or certificated engineer.

(1) If upon any investigation made in pursuance of the last-

(*t*) 17 & 18 Vict. c. 104, s. 435.

(*u*) 25 & 26 Vict. c. 63, s. 11.

(*x*) These words "seem to mean by his counsel or attorney." The Local Marine Board has a discretion as to summoning witnesses for the defence, and for that purpose may require to be informed what they are expected to prove, the expense of the witnesses being thrown upon the public. *R.* v. *Collingridge*, 34 L. J. Q. B. 9. Wilful and corrupt false-swearing on a material matter in such an inquiry is perjury. *R.* v. *Tomlinson*, L. R. 1 C. C. 49.

(*y*) 17 & 18 Vict. c. 104, s. 15. *Supra* § 46, note (*y*).

(*z*) 17 & 18 Vict. c. 104, s 241.

quoted section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness, or tyranny:

(2) If upon any investigation of a shipping casualty, or upon any investigation made by a Naval Court, it is reported that the loss or abandonment of or serious damage to any ship, or loss of life has been caused by his wrongful act or default:(*a*)

(3) If he is superseded by the order of any Admiralty or Naval Court: and

(4) If, upon any investigation made by any Court or Tribunal authorised by the legislative authority in any British Possession to make inquiry into charges of incompetency or misconduct on the part of masters, certificated engineers, or mates of ships, or as to shipwrecks or other casualties affecting ships, he is reported by such Court or Tribunal to have been guilty of any gross act of misconduct, drunkenness, or tyranny, or to have caused by his wrongful act or default the loss or abandonment of or serious damage to any ship, or loss of life.(*b*)

Colonial courts of inquiry.

§ 53. By the Merchant Shipping Colonial Inquiries Act, 1882,(*c*) an enlarged jurisdiction, with all the powers above described, of dealing with certificates(*d*) has been conferred upon such Courts in British Possessions as are authorised by their respective Legislatures to inquire into charges of incompetency or misconduct against certificated officers, or into wrecks and casualties,(*e*) and extends to the following cases, viz.:—

(1) When the incompetency or misconduct has occurred on board a British ship on or near the coasts of, or on a voyage to a port within, the British Possession; or (2) on board a British ship registered in the Possession; (3) when the wreck or casualty occurs to a British ship on or near the coasts of, or on a voyage to a port within, the British Possession; or (4) to a British ship registered in the Possession; (5) when the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board such ship, is found in the Possession; (6) when some of the crew of a British ship which has suffered wreck or casualty, and who are witnesses to the facts, are found in the Possession.

This jurisdiction is as complete as if the cause of inquiry had arisen within the ordinary jurisdiction of the tribunal; but it is not exercisable in any case which has once been the subject of

(*a*) Where the use of improper ballast contributed to the loss, and the master was not restricted by his owners in the amount to be expended on ballast, his certificate was suspended under this clause. *The Golden Sea*, 7 P. D. 194. On the other hand, an error of judgment at a moment of great difficulty and danger will not justify the suspension or cancellation of a certificate. *The Famenoth, ibid.*, 207.

(*b*) 17 & 18 Vict. c. 104, s. 242, as amended by 25 & 26 Vict. c. 63, s. 23, subs. (1), (2); and as to Colonial inquiries by 45 & 46 Vict. c. 76, s. 7.

(*c*) 45 & 46 Vict. c. 76.

(*d*) *Ibid.*, s. 5.

(*e*) *Ibid.*, ss. 3, 4.

inquiry and report by any competent Court in the Queen's dominions, or in respect of which an officer's certificate has been dealt with by a Naval Court, or an inquiry has been commenced in the United Kingdom.(*f*)

General provisions.

§ 54. The Tribunal is in all cases required at the conclusion of the case, or as soon afterwards as possible, to state in open Court its decision (*g*) with respect to cancelling or suspending certificates, and to send a full report upon the case, with the evidence, to the Board of Trade, and also, if it cancels or suspends any certificate, to forward such certificate to the Board of Trade, with its report of the case ;(*h*) and for this purpose every master, mate, or engineer whose certificate is suspended or cancelled under the powers described above, is required, upon demand of the tribunal by which the case is investigated or tried, to deliver to it his certificate, or if it is not demanded by the tribunal, to deliver it upon demand to the Board of Trade, or as it directs, subject to a maximum penalty of fifty pounds for default.(*i*)

Certificate to be delivered up.

The above powers of cancelling and suspending cannot, as have already been pointed out,(*k*) be exercised unless a copy of the report or a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate before the commencement of the investigation, nor, in the case of investigations by Justices, a Stipendiary Magistrate, or Wreck Commissioner, unless one assessor concurs in the report.(*l*) And the position of certificated officers is further safeguarded by the power of the Board of Trade, if they think the justice of the case requires it, to re-issue and return any certificate which has been cancelled or suspended, or shorten the time of suspension, or grant a new certificate of the same, or any lower grade, in place of any cancelled or suspended certificate.(*m*)

Rehearing.

§ 55. Besides its powers of reissuing cancelled certificates, and of shortening the period of suspension, the Board of Trade is empowered (*n*) in any case where an investigation into the conduct of a certificated officer, or into a shipping casualty, has been held, whether in this country, under the Merchant Shipping

(*f*) 45 & 46 Vict. c. 76, s. 3.

(*g*) Though the decision must be given in open Court, reasons which were not mentioned at the time of the decision may be subsequently given in the report to the Board of Trade. *The Kestrel*, 6 P. D. 182.

(*h*) 25 & 26 Vict. c. 63, s. 23, subs. 3. The requirement as to forwarding the certificate to the Board of Trade is not applied in the case of Colonial certificates. Order in Council, May 9th, 1893, see § 40 *supra*.

(*i*) 25 & 26 Vict. c. 63, s. 24, as amended by 42 & 43 Vict. c. 72, s. 3 (4).

(*k*) *Supra* § 46.

(*l*) 25 & 26 Vict. c. 63, s. 23, subs. 6.

(*m*) *Ibid.*, sub-s. 4. This sub-section is not applied to the case of Colonial certificates. See Order in Council of May 9th, 1891, which contains substituted provisions, and § 40 *supra*.

(*n*) 42 & 43 Vict. c. 72, s. 2 (1).

Acts, or in a British Possession, (*o*) to order the case, or any part of it, to be reheard; and is required to do so if new and important evidence which could not be produced at the investigation has been dicovered, or if in the opinion of the Board there has been ground for suspecting a miscarriage of justice. The case may be ordered to be reheard either by the Tribunal which heard it in the first instance, or by the Wreck Commissioner, or in England by a judge of the High Court exercising Admiralty jurisdiction, or in Scotland by the senior Lord Ordinary, or any other judge in the Court of Session who may be appointed for the purpose.

Appeal.

§ 56. In all cases where, in any such investigation, a decision (*p*) has been given with respect to cancelling or suspending a certificate, and an application for a rehearing has not been made, or has been refused, an appeal lies at the instance of the officer affected,(*q*) where the decison was given in England, or by a Naval Court, to the Admiralty Division of the High Court of Justice; where it was given in Scotland, to either Division of the Court of Session; and where given in Ireland, to the Court or Judge of the High Court exercising Admiralty jurisdiction.(*r*)

Appeal from Colonial Courts.

§ 57. In the case of inquiries held under the Colonial Inquiries Act, 1882,(*s*) where a rehearing has not been applied for or has been refused, an appeal lies "from any order or finding of the Court or Tribunal holding" the inquiry to the Admiralty Division of the High Court in England; provided, however, that no appeal lies from an order or finding in an inquiry into a casualty affecting a ship registered in a British Possession, or from a decision respecting the suspension or cancellation of a certificate, unless such certificate was granted under the Merchant Shipping Act, 1854, or some amending Act, or under the Merchant Shipping Colonial Act, 1869.(*t*)

It will be observed that the words conferring an appeal from the Colonial Courts are wider than those which confer an appeal from Tribunals in the United Kingdom and from Naval Courts, and it seems that, in cases where an appeal lies from a Colonial Court to the High Court, any party to the proceedings, whether an officer or not, who is aggrieved by an order of a Colonial Court, would have a right of appeal.

(*o*) And see 45 & 46 Vict. c. 77, s. 6.

(*p*) A refusal to grant a rehearing is not "a decision" from which an appeal lies. *The Ida*, 11 P. D. 37.

(*q*) Not at the instance of the owner, even though he may have been condemned in costs. *The Golden Sea*, 7 P. D. 194. It does not seem to be intended that the Board of Trade should have a right of appeal against a refusal to deal with a certificate, nor is any attempt to promote such an appeal reported.

(*r*) 42 & 43 Vict. c. 72, s. 2 (2).

(*s*) 45 & 46 Vict. c. 76.

(*t*) 32 & 33 Vict. c. 11, see 45 & 46 Vict. c. 76, s. 6.

§ 58. The practice with respect to hearing of appeals is regulated by general rules made under the authority of the Lord Chancellor.(*u*) Where it is desired to adduce fresh evidence, application for leave to do so should be made before the hearing of the appeal.(*x*) The Admiralty Court, being assisted by skilled assessors, does not admit evidence relating to matters of nautical skill and practice.(*y*) The Court which hears the appeal has a discretion as to the costs occasioned thereby.(*z*) The unsuccessful party will in general be ordered to pay the costs of the appeal, and where a certificate has been dealt with below at the invitation of the Board of Trade, or where the Board resists a successful appeal, no exception is made in its favour.(*a*) Where the Board having resisted an appeal, the Court affirmed the decision of the Wreck Commissioner, suspending a certificate, but being of opinion that the punishment was too severe, recommended that the remainder of the suspension should be remitted, both parties were left to bear their own costs.(*b*)

Practice on appeals.

Costs.

§ 59. All the provisions of the Merchant Shipping Acts with respect to the suspension and cancellation of certificates, and inquiries and investigations into the conduct of their holders, and all other provisions relating to certificates of masters and mates, apply also to the certificates of skippers and second hands of fishing boats.(*c*)

Fishing boats.

His Remuneration.

§ 60. The master is remunerated for his services by a salary or wages, which he receives from the owners. The amount of such salary is a matter of private arrangement and agreement between the master and those owners who employ him. His right to it was never like that of seamen in former times, dependent on the earning of freight. The old rule, that "freight is the mother of wages" did not apply to him.(*d*) And unlike a seaman, he may insure his wages as well as any commissions or other interest that he may have in the ship or the voyage.(*e*)

By salary or wages.

§ 61. The consideration for his receiving this salary is his performance of his duties towards the owners employing him. If, therefore, he is guilty of desertion,(*f*) or of any gross misconduct, such as barratry, or constant drunkenness, and a consequent non-performance of duty, or entire neglect of his duty

What forfeits all his accruing wages.

(*u*) 42 & 43 Vict. c. 72, s. 2 (3); 45 & 46 Vict. c. 76, s. 6; 39 & 40 Vict. c. 80, s. 30. See the Shipping Casualties (Appeal and Rehearing) Rules, 1880. App. No. 1.

(*x*) *The Famenoth*, 7 P. D. 207.

(*y*) *The Kestrel*, 6 P. D. 182.

(*z*) Shipping Casualties (Appeal and Rehearing) Rules, R. 6.

(*a*) *The Arizona*, 5 P. D. 123; *The Famenoth*, 7 P. D. 207, 216, and see *The Golden Sea*, *ibid.*, 194.

(*b*) *The Kestrel*, 6 P. D. 182.

(*c*) 46 & 47 Vict. c. 41, s. 39.

(*d*) *Hawkins* v. *Twizell*, 5 E. & B. 883.

(*e*) *King v. Glover*, 2 B. & P. N. R. 206.

(*f*) *The Roebuck*, 31 L. T. N. S. 274.

as master, as by making over the command of the ship to another person;(*g*) or if he exhibit throughout a voyage gross incapacity, he loses all right to recover wages which were growing or accruing due, but which had not actually become due at the time of such wrong behaviour.(*h*) Again, the instructions given to a master may be so precise and positive, that if he wilfully disobey them, his disobedience, even though no evil consequences arise, may entail an entire forfeiture of his wages.(*i*) And in a recent case where the mortgagee of a ship put a man in possession, and the master put to sea with the man on board, he was held to be disentitled by his conduct from claiming anything against the mortgagee from the time of taking possession.(*k*) But where the orders of persons claiming to be mortgagees were disobeyed by the master who claimed to be owner of a moiety of the ship, and disputed the title of the mortgagees in respect of such moiety, it was held in Ireland, without entering upon the merits of the dispute, that the master was entitled to wages for the whole period of his service.(*l*)

What is not sufficient to work a forfeiture.

§ 62. The master does not forfeit his wages by occasional drunkenness;(*m*) and, speaking generally, nothing more can be reasonably required or expected of him than the honest exercise of his discretion, according to the degree of ability and experience in business which such an officer may fairly be supposed to possess, and no mere error of judgment on his part, not tainted with any guilty intention or corrupt motive, will have the effect of causing a forfeiture of his wages.(*n*) On this principle, neither want of seamanship in a master, nor neglect to communicate to a Lloyd's agent the stranding of his ship, nor neglect to sign a bottomry bond, will bar his claim for wages if he has actually continued in command of the ship.(*o*) And where a master, having instructions to take payment of balance of freight either in cash or by bank bill, took without sufficient inquiry a bill which was not a bank bill, in the belief that it was such, and which was afterwards dishonoured, his misconduct, not being wilful, did not subject him to a forfeiture of his wages, nor to a deduction therefrom of the amount of his owners' loss.(*p*)

What forfeits part of his wages.

§ 63. In a suit for wages, the Court of Admiralty has jurisdiction to entertain and determine all questions of forfeiture of the whole or part of the wages, or of deductions therefrom, by

(*g*) See *Taylor* v. *Laird*, 1 H. & N. 266.

(*h*) *The Thomas Worthington*, 3 W. Rob. 128, 133; *The Camilla*, Swab. 314; *The Macleod*, 5 P. D. 254; Maude and Pollock, 4th ed. 120. Cp. *The Marina* (misconduct of engineers), 50 L. J. Ad. 33, *post* § 485.

(*i*) *The Thomas Worthington*, 3 W. Rob. 134; *The Roebuck*, *ubi sup.*

(*k*) *The Fairport*, 10 P. D. 13.

(*l*) *The Joseph Dexter*, 20 L. T. N. S. 820.

(*m*) *The Atlantic*, Lush, 566.

(*n*) *The Thomas Worthington*, *ubi sup.*

(*o*) *The Camilla*, *ubi sup.*

(*p*) *The Dunmore*, 32 L. T. N. S. 34.

reason of desertion, misconduct, incompetency, embezzlement, or the like. Thus where a master, contrary to his owner's directions, changed his destination, and, under the alleged fear of belligerents, employed his ship for five months on voyages which his owner had not authorised, and afterwards left his ship for several days, but with the intention of returning to her, it was held that his conduct did not work an entire forfeiture, but that he was not entitled to any wages for the five months during which his disobedience continued; and that though his quitting the ship did not amount to desertion, yet his conduct was such as to justify the owner in removing the ship and appointing another master, and he could claim no wages from the date of her removal.(*q*) Where any loss, the amount of which is substantially a liquidated amount, has been occasioned by the gross neglect or misconduct of the seaman, the Court will allow such loss to be deducted from the claim for wages; and it is the constant practice of the Court to deduct from the wages of the master and mate sums which the owners have been obliged to pay by reason of short delivery of goods occasioned by the neglect of the master or mate.(*r*) But where the amount of such loss is unliquidated, and the misconduct is not such as to work a forfeiture, it cannot be set up either in bar or reduction of the claim, the remedy of the owner being by counter-claim or cross-action for breach of the contract.(*s*)

Master's rights when wrongfully discharged.

§ 64. If a master engaged for a voyage out and home is wrongfully discharged abroad, he is entitled to wages until he can obtain other employment, and in strictness, it seems, up to the termination of the contract.(*t*) A master who is, either in breach of his contract or in consequence of the loss of his vessel, discharged at a distance from his own country, will be awarded, in common with the crew, his *viaticum*—*i.e.* expenses of going home when any such are incurred—in addition to such wages as he may be entitled to.(*u*) And where he has by legal proceedings recovered his wages, with the costs of the action, he will also receive, as part of his costs, detention and subsistence money for the time during which he is necessarily detained ashore for the purposes of the action.(*x*)

§ 65. Besides his salary or wages, which is a matter of agreement between the master and those who employ him, he is

(*q*) *The Roebuck*, 31 L. T. 274.

(*r*) Maude and Pollock, 4th ed. 121; *The New Phœnix*, 2 Hagg. 420.

(*s*) Williams and Bruce, 2nd ed. 195; *The Camilla*, Swa. 314; *The Sir Charles Napier*, 5 P. D. 73.

(*t*) *The Camilla*, Swa. 312, 316; and see *The Blessing*, 3 P. D. 35.

(*u*) *The Elin*, 8 P. D. 42, 129. As to priorities, see *The Immacolata Concezione*, 9 P. D. 37; see also *The Raffaellucia*, 37 L. T. 365; *infra* § 512.

(*x*) As to the scale of detention and subsistence money recoverable, see *The Royal Family*, 31 L T. 704; see also *The Carolina*, 34 L. T. 399

Primage and average.

usually also entitled to what is called "primage" and "average." They are generally stipulated for in the bills of lading thus, "with primage and average accustomed."

Primage.

"Primage," formerly called "hat-money" or "pocket-money," is a small payment made by the owner or consignee of the goods to the master for the care and trouble he has bestowed upon them. It varies in amount according to the particular trade in which the ship is engaged. Where it is made payable by the consignee, the master may sue him for it, although the freight has been already settled with the shipowner.(*y*)

Average.

The word "average" in the bill of lading denotes several petty charges, which are to be borne partly by the ship and partly by the cargo, such as the expense of trimming, beaconage, &c. Some of the foreign ordinances specify the particulars that fall under this head, and the mode of distributing the charge, but with us they depend entirely upon usage. This and the preceding article of primage are often commuted for a specific sum, or for a certain percentage on the freight.(*z*)

Express agreements as to primage and average.

Where by the bill of lading goods were to be delivered to the consignee, "he paying freight for the same as per charter-party, with primage and average accustomed," and the agreement between the shipowner and consignee (there being no actual charter-party) was for so much per ton, not mentioning primage, it was held that the master was entitled to primage from the consignee, although the master's bargain with the owner was to receive beyond his wages a sum certain "in lieu of all cabin and other allowances."(*a*) But where by his agreement with the owners the master was paid a fixed salary, "to include all charges and allowances," and a charter-party had been entered into at a freight of "60s. per ton in full," it was held that the master could not sue the consignees for primage, although he had signed a bill of lading stipulating for "5 per cent. primage in cash on delivery as customary."(*b*)

Master may not trade on his own account.

§ 66. As it is the duty of the master to devote all his time and energies to the duties of his office and to promoting the interests of his employers, the law does not allow him to trade on his own account, or to hire out any part of his services to another,(*c*) or to claim any premium for himself out of transactions in which he is engaged on behalf of his employers, even although it may have been the custom for a master to do so.(*d*) If the

(*y*) "Primage is an old charge, and clearly in its origin payable to the master. It is called in old books hat money," per Lord Tenterden, *Best* v. *Saunders*, M. & M. 212; *Charleton* v. *Cotesworth*, R. & Moo. 175; Maude and Pollock, 4th ed. 121.

(*z*) Maclachlan, 3rd ed. 450.

(*a*) *Best* v. *Saunders*, M. & M. 208.

(*b*) *Caughey* v. *Gordon*, 3 C. P. D. 419.

(*c*) *Gardner* v. *M'Cutcheon*, 4 Beav. 534.

(*d*) *Diplock* v. *Blackburn*, 3 Camp. 43

master earns anything, either by trading on his own account or by hiring out his services to others than those by whom he is employed as master, the owners or persons by whom he is employed as master are entitled to such earnings.(*e*)

Disbursements.

§ 67. Closely connected with the subject of the master's remuneration is that of his disbursements. In addition to his salary, he is entitled to be repaid all sums expended, and to be indemnified against all liabilities incurred, in the course of his agency on account or for the benefit of the ship.(*f*) What may properly be claimed as disbursements will be considered hereafter.(*g*) It is necessary to refer to them here, since, as will be presently seen, the master has the same remedies for the recovery of his disbursements as for that of his wages.

The Master's Remedies for Wages and Disbursements.

The master's remedies before the Merchant Shipping Act, 1854.

§ 68. In respect of his own wages, the master's rights and remedies long differed from those of ordinary seamen. Formerly he could not sue for them in the Admiralty Court ;(*h*) nor had he by the law of England any lien either on ship or freight for his wages, or for necessary disbursements to fit the ship for the voyage, or for stores, repairs, or provisions.(*i*) This principle of law was established to preserve the legal control and management of the vessel to the owner. The owner was the employer, the master was his servant, not his agent, in the general sense of that word ; and as a servant he could not set up such a claim.(*k*)

Master to have same remedies for wages as seamen.

§ 69. By the Merchant Shipping Act, 1854,(*l*) however, " every master (*m*) of a ship shall, so far as the case permits, have the *same rights, liens and remedies for the recovery of his wages, which by this Act, or by any law or custom, any seaman, not being a master, has for the recovery of his wages ;* and if in any proceeding in any Court of Admiralty or Vice-Admiralty, touching the claim of a master to wages, any right of set-off or counter-claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due."(*n*)

(*e*) *Thompson* v. *Havelock*, 1 Camp. 527 ; *Shallcross* v. *Oldham*, 2 J. & H. 609.

(*f*) Story on Agency, 335, per Lord Tenterden, C. J., *Thacker* v. *Moates*, 1 Moo. & R. 79 ; *The Feronia*, L. R. 2 Ad. 65, 76 ; *The Marco Polo*, 24 L. T. 804 ; *The Fairport*, 8 P. D. 48.

(*g*) *Infra* §§ 403–408.

(*h*) *Clay* v. *Snelgrave*, 1 Ld. Raym. 576; *Ragg* v. *King*, 2 Str. 858 ; *The Lord Hobart*, 2 Dods. at p. 104.

(*i*) *Wilkins* v. *Carmichael*, 1 Doug. 101 ; *Hussey* v. *Christie*, 9 East. 426; *Smith* v. *Plummer*, 1 B. & Ald. 575 ; *Bristowe* v. *Whitmore*, 9 H. L. 391.

(*k*) *Per* Lord Wensleydale, *Bristowe* v. *Whitmore*, 9 H. L. at p. 411.

(*l*) 17 & 18 Vict. c. 104, s. 191.

(*m*) By s. 2 "master" includes every person (except a pilot) having command or charge of any ship.

(*n*) The remedy given by this section applies in the case of a master of a foreign

The rights, liens, and remedies which seamen have for the recovery of their wages are considered at length elsewhere.(*o*) The most important of them is the "maritime lien." In this and the following sections it is intended only to indicate in what respect the position of the master is peculiar. It is at once apparent that the foregoing enactment conferred no jurisdiction upon Courts of Admiralty in respect of a master's disbursements, unless a right of set-off or counter-claim was set up, in which case the whole account could be gone into.(*p*) Neither did it enable such Courts to entertain any claim "founded upon a special agreement."(*q*) For wages earned under an ordinary agreement, the effect was to confer upon the master a "a maritime lien" over ship and freight, enforceable in the Admiralty Court.

Maritime lien for wages.

Remedies for disbursements and wages due under special contract. Earlier enactments.

By the Admiralty Court Act, 1861, it was enacted that (*r*) "the High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also *over any claim by the master of any ship for wages* earned by him on board the ship; and for *disbursements* made by him on account of the ship: provided always, that if, in any such cause, the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court." The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings *in rem*, or by proceedings *in personam*.(*s*) It is now vested in the Probate, Divorce and Admiralty Division of the High Court of Justice.(*t*)

Maritime lien for disbursements.

§ 70. It was held for several years that the joint effect of these statutes was to confer upon the master a maritime lien for

ship: *The Milford*, Swab. 362; *The Jonathan Goodhue*, Swab. 524; but the jurisdiction conferred is discretionary only, and notice of the institution of proceedings should be given to the Consul of the State to which the ship belongs; otherwise, upon his protesting against the action being allowed to proceed, it is liable to be dismissed: *The Herzogin Marie*, Lush. 292; *The Octavie*, Br. & L. 215; *The Leon XIII.*, 8 P. D. 121; and see *The Timor*, 9 L. T. 397. Under this section also, a master has a lien for his wages in the Vice-Admiralty Court, whatever may be the municipal law of the colony: *The Rajah of Cochin*, Swab. 473. The object of this section is to enable the Court to do justice where the owners set up a counter-claim with reference to the ship's other disbursements; but the Court refused (before the Judicature Acts) to take cognizance, in a suit for wages, of a master's claim to an equitable share in the vessel: *The D. Jex*, 13 L. T. 22. On the other hand, in a cause of wages and disbursements, instituted on behalf of a master, himself a co-owner, against other part owners, the defendants may plead in answer, that on a balance of account between the master as co-owner and the defendants, nothing is due to the master: *The City of Mobile*, L. R. 4 Adm. 191.

(*o*) §§ 509 *et seq. infra.*

(*p*) *The Caledonia*, Swa. 17.

(*q*) See *The Tecumseh*, 3 W. Rob. 144; *The Harriet*, Lush. 285.

(*r*) 24 Vict. c. 10, s. 10.

(*s*) *Ibid.* s. 35.

(*t*) 36 & 37 Vict. c. 66, s. 34; 38 & 39 Vict. c. 77, s. 11 (3).

his wages whether earned "under a special contract or otherwise," and also for his disbursements.(*u*) At length, however, it was held by the House of Lords, reversing the decision of the Court of Appeal, that a wrong construction had been put upon the last cited statute, and that the master had no maritime lien for his disbursements.(*x*) This decision was immediately followed by a further enactment whereby(*y*) it was provided that "every master of a ship, and every person lawfully acting as master of a ship, by reason of the decease or incapacity from illness of the master, shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements properly made by him on account of the ship as a master of a ship has for the recovery of his wages." And the section goes on in terms similar to those of the Merchant Shipping Act, 1854, s. 191,(*z*) to empower the Court, when any set-off or counter-claim is set up, to enter into and settle all accounts.

New enactment.

§ 71. The last-mentioned decision of the House of Lords suggests a doubt whether the master is in truth entitled to a maritime lien for wages earned "under a special contract." The question has not been recently raised in a Court of law, and may possibly be considered as still open. It is apprehended, however, that the lien would be maintained.(*a*)

Whether lien for wages due under special contract.

§ 72. Jurisdiction over masters' wages and disbursements was conferred upon Vice-Admiralty Courts by the Act of 1863;(*b*) and in future, under the Act of 1890,(*c*) where the Act is in force, Colonial Courts of Admiralty will have in these respects the like Admiralty jurisdiction with the High Court in England. Jurisdiction over any claim for wages (but not for disbursements) (*d*) is also possessed by County Courts having Admiralty jurisdiction, where the amount claimed does not exceed £150.(*e*)

Colonial Courts of Admiralty.

§ 73. The result of the foregoing enactments is that the master may now proceed to recover his wages and disbursements, either by action against the owners personally, or by process against the ship itself in the Admiralty Court, for the enforcement of the lien, which he now has equally with the seamen. He is entitled

Result of enactments.

(*u*) *The Mary Ann*, L. R. 1 Ad. 8; *The Ringdove*, 11 P. D. 120.

(*x*) *The Sara*, 14 Ap. Ca. 209 (12 P. D. 158, in C. A.).

(*y*) 52 & 53 Vict. c. 46, s. 1.

(*z*) *Supra*, § 69.

(*a*) See the question considered in a pamphlet entitled "Maritime Lien," by the present editor (Stevens & Sons, 1889). The recent statute would seem to assume the existence of the lien for wages in all cases. As to the meaning of the words "Special contract," see *The Tecumseh*, 3 W. Rob. 144.

(*b*) 26 Vict. c. 24, s. 10 (2).

(*c*) 53 & 54 Vict. c. 27, ss. 2, 3, 16.

(*d*) *The Dictator*, 4 Asp. M. C. 19.

(*e*) 31 & 32 Vict. c. 71, s. 3, sub-s. 2. This sub-section has been held to give jurisdiction over a master's claim for damages for wrongful dismissal. *The Blessing*, 3 P. D. 35.

to sue the ship for wages, as "earned by him on board the ship," within 24 & 25 Vict. c. 10, s. 10, if he performed the duties of master, although during his services he did not sleep on board the ship, and although many of his duties were performed on shore.(*f*)

Double pay.

It was formerly held that s. 191 of 17 & 18 Vict. c. 104, entitled a master whose wages were improperly withheld to the double pay enjoyed by seamen under the 187th section of that Act.(*g*) But in the case of *The Arina*(*h*) it was decided that that view was incorrect, and that a master is entitled neither to double pay under those sections, nor to wages "until the time of final settlement" under 43 & 44 Vict. c. 16, s. 4.(*h*)

It has also been held, but without argument, that he is entitled to compensation for a reduction in the allowance of provisions under the 223rd section.(*i*) In view of the decision in *The Arina*(*h*) it may be doubted whether this opinion would be upheld.

Limitation: six years.

It seems that by the operation of 4 Anne, c. 16, s. 17, and the 191st sect. of 17 & 18 Vict. c. 104, the master of a ship has, like other seamen, six years within which he may bring his suit for wages in the Court of Admiralty.(*k*)

His Maritime Lien.

His "maritime lien."

§ 74. The master has now, as we have seen,(*l*) a maritime lien for his wages and disbursements, and not merely a right to proceed for their recovery.

"A maritime lien does not include or require possession. The word is used in maritime law, not in the strict legal sense in which we understand it in Courts of common law, in which case their could be no lien where there was no possession, actual or constructive; but to express, as if by analogy, the nature of claims, which neither presuppose nor originate in possession. . . . .

What it is.

A maritime lien is . . . . a claim or privilege upon a thing, to be carried into effect by legal process, and Story, J.(*m*) . . . . adds, that wherever a lien or claim is given upon the thing, the Admiralty enforces it by a proceeding *in rem*. . . . . This claim or privilege travels with the thing into whosesoever possession it

(*f*) *The Chieftain*, B. & L. 104.

(*g*) *The Princess Helena*, Lush. 190.

(*h*) 12 P. D. 118; see these sections, § 495 *infra*.

(*i*) *The Josephine*, Swab. 152; see § 524 *infra*.

(*k*) *The Chieftain*, Br. & L. 212; see also 21 Jac. I. c. 16, s. 3, § 515, *infra*.

(*l*) *Supra*, §§ 69, 70. But the Court of Admiralty had, before the Judicature Acts, no jurisdiction over a *mate's* claim for wages paid to the crew and for necessary disbursements made by him in foreign ports. *The Victoria*, 37 L. J. Adm. 12. A mate acting in the capacity of master has now, as we have seen (*sup.* § 70), a lien.

(*m*) *The Brig Nestor*, 1 Sumn. at p. 78. The converse of this proposition is not true. *The Heinrich Bjorn* 11 App. Ca. 270.

may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding *in rem*, relates back to the period when it was first attached."(*n*)

For what disbursements.

§ 75. The disbursements made by the master, for which he has, as we have seen, a maritime lien, include all *proper* expenditure made by the master upon the ship, whether the particular articles, the subject of this expenditure, were obtained by immediate or by promised payment; and the expenditure is *proper* if the particular articles have actually been applied to the use of the ship, and if these articles were such as the necessities of the ship required and justified.(*o*)

All the incidental charges and expenses necessarily incurred by the master to preserve the property of the owners, and to enable the master to accomplish the objects of his owners, must be fully paid by the latter. If, for example, he expend money of his own for the necessary benefit of the ship, he has a right to call upon the owners to repay him.(*p*) So, if he has, by the express or implied request of his owners, necessarily incurred expenses in carrying on or defending suits for the benefit of his owners, those expenses must be borne by them.(*q*) But if he has, voluntarily and without any authority, made advances or payments, or has incurred unreasonable, useless, or superfluous expenses, the owners will not be bound to any reimbursement thereof.(*r*)

Under what circumstances enforceable.

§ 76. A master may enforce his maritime lien for wages and disbursements against the ship,(*s*) although persons have become interested in her as purchasers (*t*) or mortgagees,(*u*) without notice of the lien; although he was appointed by time charterers, if the circumstances were such as to constitute him the servant of the owners (*x*) and their agent for the purpose of making disbursements; or by a person who fraudulently obtained possession of the ship, if the master has discharged his duties in ignorance of the fraud;(*y*) and although he is himself a part owner,(*z*) or

(*n*) Per Jervis, C.J., *The Bold Buccleugh*, 7 Moo. P. C. 267, 284; *The Feronia*, L. R. 2 Ad. at p. 72; see also *The Nymph*, Sw. 86, and § 510 *et seq.*, *infra*.

(*o*) *The Feronia*, L. R. 2 Ad. 65, 75.

(*p*) Story on Agency, 335; *per* Lord Tenterden, C. J., *Thacker* v. *Moates*, 1 Moo & R. 80.

(*q*) Story on Agency, 335; *The James Seddon*, L. R. 1 Adm. 62.

(*r*) Story on Agency, 336. As to what is included under the term necessary, see further § 404, *infra*.

(*s*) In the case of mail ships exempted from arrest under the Mail Ships Act, 1891 (54 & 55 Vict. c. 31), the lien must now be enforced against the security given under that Act: see ss. 1, 3, 5.

(*t*) *The Fairport*, 8 P. D. 48; *The Bengal*, Swa. 468.

(*u*) *The Chieftain*, B. & L. 104, 212; *The Caledonia*, Swa. 17; *re Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282, *q.v.* as to costs of enforcing lien.

(*x*) *The Beeswing*, 53 L. T. 554; *The Turgot*, 11 P. D. 21, and see *Morgan* v. *Castlegate Steamship Co.* (1893), A. C. 38.

(*y*) *The Edwin*, B. & L. 281.

(*z*) *The Feronia*, L. R. 2 Ad. 65; *The Daring*, *ib.* 260.

a mortgagee.(*a*) Nor will his lien be prejudiced by the commencement of bankruptcy or winding-up proceedings against the owners of the ship.(*b*)

Lien may be waived or lost.

§ 77. We have seen that the master may by misconduct forfeit his wages or suffer a deduction from them.(*c*) He may also, without misconduct, lose or waive his lien; and in this respect he does not differ from seamen. But it may be convenient to advert to the subject here, as questions of the kind more frequently arise in actions by masters for wages and disbursements than in seamen's actions for wages.

The maritime lien may always be lost by such delay, or *laches*, as would render it inequitable to enforce it, having regard to subsequently acquired interests.(*d*) But it seems that the wages lien, in respect of which a time is limited by law,(*e*) would not be defeated within the statutory period of six years unless a very strong case were established.(*f*)

Examples.

In *The Bengal*,(*g*) the master was hired by Robinson, the then owner of the ship, and sailed in her to Port Philip, where she was sold by the owner in November, 1854. In November, 1856, the master arrived in London and sued Robinson for his wages, and obtained judgment on the 1st May, 1857. On the 28th May, 1857, Robinson was adjudged bankrupt. On the 14th September, 1857, the master filed his claim in bankruptcy against Robinson's estate, but the estate was insolvent, and the trade assignee did not pay the master's wages. In February, 1859, for the first time, as he alleged, the master discovered the ship, and it was held that he had still his lien, which followed the ship into the hands of the purchasers, and that he was entitled to sue the ship for his unpaid wages in the Admiralty Court, although the ship had changed hands.

In *The Fairport*,(*h*) the master had drawn in May, 1880, for his disbursements upon charterers, and the bills were dishonoured. Judgment was recovered against him on the bills in July, 1881; and in October of the same year the ship was sold to persons who alleged that they had purchased without notice of the master's claim. In November, 1882, he brought his action *in rem* against the ship and freight, and it was held that he was not debarred by *laches* from enforcing his lien.

But the master or seaman may, by voluntarily electing to waive immediate payment, surrender his maritime lien, and

(*a*) *The Repulse*, 2 W. Rob. 398.

(*b*) *In re T. C.* 11, Ir. Rep. Eq. 151; *Re Rio Grande do Sul Steamship Co. ubi sup.*

(*c*) *Supra*, §§ 62, 63.

(*d*) But the personal release of the owner does not operate as a release of the ship. *The Chieftain*, B. & L. 212.

(*e*) 4 Anne, c. 16, s. 17, *sup.* § 73.

(*f*) *The Royal Arch*, Swa. 269, 284.

(*g*) Swa. 468.

(*h*) 8 P. D. 48.

restrict himself to his personal remedy against his employers. Thus, where a seaman, having the option at a foreign port to receive his wages in money or by bill upon the owners, prefers the latter as more convenient for remittance home, he loses his claim against the ship if the bill is dishonoured.(*i*) And so, where a master elected to allow a portion of his wages to remain in the managing owners' hands at interest, and the managing owners became bankrupt, he was held to have lost his lien with respect to that portion, but not with respect to so much of his wages as the Court was not satisfied that he had had an opportunity of receiving, the Court requiring clear proof from ship-owners who allege an agreement by their servant to allow his wages to remain in their agent's hands, and to forego his rights against themselves.(*k*)

Lien may be waived.

Where a master, being under contract to supply and pay for provisions for the crew, left a balance in the hands of the managing owner to be applied in payment for such provisions, and the managing owner misapplied the balance for his own purposes, and in his accounts with the owners debited them for the necessaries, it was held that the master could not, in an action *in rem* for wages and disbursements, be required to give credit to the owners for the amount of the loss which they had sustained through the misconduct of their agent, the managing owner.(*l*)

§ 78. It was formerly held, that to entitle the master to sue in the Court of Admiralty, under 24 Vict. c. 10, s. 10, for "*disbursements made by him on account of the ship*," the money must have been actually paid by the master, and that, if he had made himself merely liable to pay by giving a bill of exchange or otherwise, he could not set up a claim for disbursements in that Court.(*m*) But these words are now more liberally construed to include liabilities incurred by the master for all proper expenditure for the benefit of the ship.(*n*)

What are "disbursements" on account of ship.

Liabilities incurred.

Examples

Necessaries having been supplied to a ship in a foreign port, they were paid for by the agents at that port, the master indorsing the accounts to the agents, when sent to him, with a request to them to pay, and signing them. The master was accredited to the agents by the owners, and the agents were to draw bills on the owners for the amount advanced. No money passed through the master's hands. When the ship arrived in England, mortgagees took possession of her and of the freight. It was held,

(*i*) *The William Money*, 2 Hagg. 136.

(*k*) *The Rainbow*, 53 L. T. N. S. 91. See also *The Simlah*, 15 Jur. 866; *The Albion*, 27 L. T. 723; 1 Asp. 481, and note (*a*); *The Repulse*, 2 W. Rob. 398.

(*l*) *The Dora Tully*, 54 L. T. N. S. 467.

(*m*) *The Chieftain*, B. & L. 104; *The Edwin*, B. & L. 281.

(*n*) *The Feronia*, L. R. 2 Ad. 65, 76; *The Marco Polo*, 24, L. T. 804; cp. *Bristowe* v. *Whitmore*, 9 H. L. 391.

that as the master had become personally liable for the amounts so paid, he had his lien on the ship, and might proceed *in rem* against her for these payments.(*o*) On the same principle, where the master had drawn bills for necessaries upon charterers, and, the bills having been dishonoured, judgment was recovered against the master for their amount, it was held that his liability under the judgment must be considered as a disbursement, for which he was entitled to sue the ship.(*p*)

No lien for disbursements on account of charterer.

But when the charter-party provides that certain of the ship's disbursements are to be made by the charterers, the master cannot, on the bankruptcy of the charterers, charge such disbursements to the owners and recover them by proceedings against the ship, at any rate when he has notice of the charter-party.(*q*) And inasmuch as "disbursements on account of the charterer" do not fall within the words "disbursements on account of the ship," in respect of which alone the recent statute(*r*) confers a lien, there is no lien for such disbursements even upon the freight which belongs to the charterers. Indeed, such a lien would be inconsistent with the practice of the Court of Admiralty, which never recognised a maritime lien upon freight unless founded upon a right to proceed *in rem* against the ship.(*s*)

When master may enforce lien.

§ 79. As a general rule, the master is not entitled to recover in an action for wages until the service has terminated, or until he has been discharged.(*t*) But a master, who is compelled by pressing necessity of ill-health to leave his ship abroad, is entitled to sue immediately for wages;(*u*) and where a ship has been lost with all hands, the personal representative of the master is entitled to recover wages for the period of service before the loss.(*x*)

Rights of his personal representative.

Not against other ship.

A master has no lien on one ship for services rendered in another ship belonging to the same owner; but he may sue in respect of services rendered in the same ship on a previous voyage.(*y*)

(*o*) *The Marco Polo*, 24 L. T. 804.

(*p*) *The Fairport*, 8 P. D. 48; and see *The Limerick*, 1 P. D. 292, 411. Before the recent statutes, where a ship was taken by a privateer, and the master agreed for her ransom and gave himself up as a hostage, and the owners neglected to pay the money, it was held that he might sue the ship for the redemption money. *Wilson* v. *Bird*, 1 Ld. Raym, 22; cp. *Trantor* v. *Watson*, 6 Mod. 11.

(*q*) *Morgan* v. *Castlegate Steamship Co.*, (1893) A. C. 38; and see *The Beeswing*, 53 L. T. 554; *The Turgot*, 11 P. D. 21; *The Durham City*, 14 P. D. 85.

(*r*) 52 & 53 Vict. c. 46, s. 1; *supra*, § 70.

(*s*) *Morgan* v. *Castlegate Steamship Co.*, (1893) A. C. 38.

(*t*) *The Hemisphere Borealis*, 5 (Irish) Jur. N. S. 180.

(*u*) *The Rajah of Cochin*, Swa. 473.

(*x*) *Hawkins* v. *Twizell*, 5 E. & B. 883. As to right of master's personal representative to recover passage money in respect of contracts made by the master, see *Siordet v. Brodie*, 3 Camp. 254.

(*y*) *The Julinder*, 1 Sp. E & A. 71, 77.

Ranking of the Master's Maritime Lien.

Ranking of liens.

§ 80. Maritime liens, being, with the exception of the damage lien, in the nature of rewards for services rendered, rank against the fund, out of which they are to be paid, in the inverse order of their attachment on the *res*, or property, and the last in time should be the earliest in payment. The sole reason for this is, that the later benefit preserves the *res* to satisfy the earlier claims, and earns thereby a superior equity in respect of the common fund. Nor are wages any exception to the above rule, but, as they do not accrue due until the end of the voyage, they become, in fact, the later lien.(*z*)

Over what claims master's lien has precedence.

§ 81. The master's maritime lien on the ship for his wages and disbursements takes priority over all others, except those founded on claims for salvage, damage by collision,(*a*) and seamen's wages;(*b*) and on bottomry bonds given subsequently to the voyage on which the master's wages were earned, or disbursements made.(*c*) The claim of material men who have a common law, or possessory, lien on the ship for work and materials, is preferred to claims for wages earned after the possessory lien commenced.(*d*)

The master's lien for his wages and disbursements, whenever earned or made, takes priority over the claim of mortgagees.(*e*) And this is so even when he is part owner, if he has not mortgaged his share.(*f*)

In some cases postponed to claims for which master himself is liable.

It seems however that it would be otherwise if the master in such a case had mortgaged his share, upon the principle that the master's lien will not be allowed to defeat claims for which he has made himself liable.(*g*)

Solicitor's charge preferred to lien of master who retained him.

On this principle, where a solicitor acting on instructions given by the master and part-owner of a foreign ship on behalf of himself and his co-owners, had successfully defended an action brought against the ship and freight for damage to cargo, and the ship had been subsequently sold, and the proceeds and freight brought into Court in actions for necessaries, it was held that the solicitor's charge on the proceeds and freight, under 23 & 24 Vict. c. 127, s. 28, for costs, took priority of the master's claim for wages.(*h*)

(*z*) *The Hope*, 28 L. T. N. S. 287; Maclachlan, 4th ed. 740.

(*a*) *The Panthea*, 25 L. T. 389.

(*b*) *The Salacia*, Lush. 545.

(*c*) *The Hope*, 28 L. T. 287; *The William F. Safford*, Lush. 69.

(*d*) *The Immacolata Concezione*, 9 P. D. 37.

(*e*) *The Chieftain*, B. & L. 212; *The Mary Ann*, L. R. 1 Ad. 8; *The Feronia*, L. R. 2 Ad. 65; *The Hope*, *ubi sup.*

(*f*) *The Feronia*, *ubi sup.*

(*g*) *The Jenny Lind*, L. R. 3 Ad. at p. 532; per Sir R. Phillimore.

(*h*) *The Heinrich*, L. R. 3 Ad. 505; see this case explained in *The Livietta* (No. 2), 8 P. D. 209.

Claim by material men.

Similarly, where a master who was also part owner of a foreign ship, ordered necessaries, which were supplied by material men in this country, it was held that the latter were entitled to be paid out of ship and freight in priority to a claim of the master for wages and disbursements.(*i*) It must be observed that at the date of this decision (1872) it was supposed that s. 6 of the Admiralty Court Act, 1840,(*k*) conferred a maritime lien for necessaries. This view has since been declared to be incorrect;(*l*) and in a recent case(*m*) the lien of a master of a foreign ship, who was not a part owner, was preferred to the claim of a material man for necessaries, which it was alleged (though there was no evidence of this, the Court not deeming it necessary to call for it) had been ordered by the master. It is apprehended, however, that the *Jenny Lind* would still be followed in the case of a master who was also part owner.

Bottomry bond when entitled to priority over master's lien.

§ 82. A bottomry bondholder is entitled to priority over the claim of a master for wages earned on voyages *previous* to that during which the bond is given.(*n*)

And if a master, by the terms of the bottomry bond, has bound himself, as well as the ship and freight, for the payment of the bond, it would be manifestly unjust that, in defeasance of his own contract, he should not only not pay the bond himself, but should obtain out of the proceeds of the ship and freight payment of his own claims against the owners, leaving the bottomry bondholder unpaid. Hence, it is a general rule of the Court of Admiralty, that the holder of a bottomry bond, upon which the master has made himself personally liable, shall be paid, out of the proceeds of the ship and freight, before the master.(*o*) But this rule will not be acted upon where the bottomry bondholder will not be prejudiced by the master being paid before him. Therefore, where a master gave bonds on ship, freight, and cargo, binding himself, and the bonds would exhaust ship and freight, and thus defeat the master's claim; but, if the master's claim against ship and freight were satisfied first, there was ample security for the bondholders against the owners of the cargo, it was held that the master's claim should have priority over the claims of the bondholder.(*p*) And the owners of the cargo cannot under such circumstances oppose the master's claim to be paid out of ship and freight in priority to the bond-

(*i*) *The Jenny Lind*, L. R. 3 Ad. 539.

(*k*) 3 & 4 Vict. c. 65.

(*l*) *The Heinrich Bjorn*, 11 Ap. Ca. 270.

(*m*) *The Lepanto*, Cor. Barnes, J., Adm. Ct. March 7, 1893.

(*n*) *The Hope*, 28 L. T. N. S. 287, 289, where the earlier cases are discussed. See further as to the ranking of bottomry bonds, *infra* § 460 *et seq.*

(*o*) *The William*, Swa. 346; *The Jonathan Goodhue*, Swa. 524. This principle was recently applied in *The Sylvia Sonto* (cor. Sir F. Jeune, Adm. Div. June 19, 1893), a claim for disbursements under 52 & 53 Vict. c. 46, s, 1; § 70, *supra.*

(*p*) *The Edward Oliver*, L. R. 1 Adm. 379.

holder,(q) nor can they take themselves out of the operation of this rule by themselves becoming the holders of the bond.(r)

Claim for seamen's wages has priority.

§ 83. The 191st sect. of the Merchant Shipping Act, 1854, does not alter the relation of the master to the seaman. If the fund for the payment of wages is deficient, the master is not entitled to share rateably with the seamen in payment of wages.(s)

The Master's General Duties and Authority.

To devote all his time and attention to duties of his office.

§ 84. The master is bound to give all his time and attention to the shipowners who employ him. It is his duty, when the ship is employed on a trading adventure, to act for their common benefit; and, in the case of a seeking ship to obtain freight upon the best terms he can for them, free from all bias of self-interest in himself.(t) He is bound also to all whose interests are under his charge, whether owners or hirers of the ship, owners of goods, or insurers of ship, goods, or freight, to exercise care, skill, and perfect integrity in the protection and preservation of their interests.(u)

To exercise care, skill, and integrity.

It is so important for the interests of the owners of the ship and cargo, and for the successful completion of the voyage, that the master's whole time and attention should be devoted to the duties of his office, that the law, on the ground of public convenience, does not allow him to trade on his own account, or to hire out his services, or any part thereof, to another. If he does so, he is not entitled to any earnings derived from such a transaction, and if such earnings have been paid to the shipowner, the latter may retain them.(x) On the same grounds, the law does not allow the master to claim or recover premiums which arise out of transactions in which he has been engaged on behalf of his employers, even although it may have been the usage or custom for a master to do so.(y)

To obey his instructions and the laws.

The master should of course obey the written instructions of his owners, where they have given any; and where his instructions are silent he is at all events to do nothing but what is consonant to the laws of the land, whether with or without a view to their advantage; because in the absence of express orders to the contrary, obedience to the law is implied in their instructions.(z) Accordingly the master is bound not to commit or sanction any violation of the laws for the prevention of smuggling, the breach of which may occasion heavy loss or even forfeiture to his owners.(a) And if, in seeking to carry out the purpose

(q) *The Daring*, L. R. 2 Adm. 260.
(r) *The Eugenie*, L. R. 4 Ad. 123.
(s) *The Salacia*, Lush. 545.
(t) Story on Agency, 334 a; *Gardner* v. *McCutcheon*, 4 Beav. 534, 542.
(u) 2 Parsons, Sh. 3.
(x) *Gardner* v. *McCutcheon*, *ubi sup.*; *Thompson* v. *Havelock*, 1 Camp. 527.
(y) *Diplock* v. *Blackburn*, 3 Camp. 43; and see § 66, *supra*.
(z) Per Lord Ellenborough, *Earle* v. *Rowcroft*, 8 East. at p. 133.
(a) Abbott, 11th ed. (Shee's) 332.

His authority.

of his employment, he oversteps the law, he outruns his authority, and his principal will not be bound by what he does.(*b*)

To communicate with owners.

It is the imperative duty of the master during the voyage to communicate to his employers, when opportunities occur, intelligence of any events which may affect their interests. This duty exists more especially when any accident happens to the ship, because underwriters are entitled in dealing with shipowners to presume that it has been performed; and where such information ought to have been, but has not in fact been, given, owners might, in ignorance of a material injury to their vessel, effect insurances, which would be rendered void by reason of the injury not having been made known to the insurers.(*c*)

To stay by ship.

If the ship be wrecked, or in peril, or arrested, or captured, it is the master's duty to stay by her as long as any rational possibility exists that any good may be done by him, nor should he desert her until all hope is gone.(*d*)

His implied authority.

§ 85. As will be seen hereafter, his implied authority is very great, unless controlled by specific instructions to the contrary. In foreign ports, as a necessary consequence of his employment, he is authorized to bind the owners on contracts relating to the usual course of the ship's employment,(*e*) and for matters which are necessary for the prosecution of the voyage;(*f*) in certain events to hypothecate the ship, freight, or cargo;(*g*) in certain other events to sell the ship (*h*) or cargo;(*i*) sometimes even to throw the cargo or part of it overboard;(*k*) and at other times to warehouse or tranship the goods.(*l*) But he cannot bind the owners by any contract under seal, unless he has been authorized by the owners under seal to enter into such a contract.(*m*) Moreover, our law treats the master as having a special property in the ship, and as being entitled to the possession, and not as having the mere charge of her as a servant. Therefore the master may maintain in his own name an action for a violation of that possession;(*n*) or for freight.(*o*) It has also been held, that in case of collision in or near a foreign port, he has authority to institute an action *in rem* at such port, on behalf of both ship and cargo, against the offending ship.(*p*)

Master's authority to institute legal proceedngs.

(*b*) *Wilson* v. *Rankin*, 34 L. J. Q. B. 62, 67; affd. L. R. 1 Q. B. 162.

(*c*) Abbott, 13th ed. 182; *Gladstone* v. *King*, 1 M. & S. 35; see also the statement of the law by Cockburn, C.J., in *Proudfoot* v. *Montefiore*, L. R. 2 Q. B. 511, dissented from by Lord Esher, M.R., in *Blackburn* v. *Vigors*, 17 Q. B. D. 553, 570 (C. A.), but approved by the House of Lords in the same case: 12 Ap. Ca. 531. And cp. *Stribley* v. *Imperial, &c., Co.*, 1 Q. B. D. 607.

(*d*) 2 Parsons, Sh. 4.

(*e*) *Inf.* §§ 400–402.

(*f*) *Inf.* Ch. VIII.

(*g*) *Inf.* Ch. IX.

(*h*) *Inf.* Ch. VIII.

(*i*) *Inf.* §§ 260–264.

(*k*) *Inf.* §§ 243–245.

(*l*) *Inf.* §§ 240; 265–267.

(*m*) Per Bramwell, B., *Priestley* v. *Fernie*, 3 H. & C. at p. 986.

(*n*) *Pitts* v. *Gainee*, 1 Ld. Raym. 558; Story on Agency, 116; Maude & Pollock, 4th ed. 111.

(*o*) *Shields* v. *Davis*, 6 Taunt. 65. *Infra* § 314.

(*p*) *The Reinbeck*, 60 L. T. 209.

Personal Liabilities of the Master.

On contracts made for owners master is generally liable.

§ 86. In general, when a man is, and is known to be, acting and contracting merely as the agent of another, his acts and contracts will be deemed the acts and contracts of the principal only, and he will incur no personal responsibility for them to third parties;(*q*) but masters of ships form an exception to this rule.

The rule in this country and other commercial States is, that the master, as well as the owner, is personally liable upon all contracts made by him for the usual employment, repairs, and supplies of the ship;(*r*) unless either he takes care, by the express terms of the agreement, to confine the credit and liability to the owners only,(*s*) or the circumstances show that credit was really given to the owners alone;(*t*) in which latter cases there is no right of action against the master. The result is that the creditor has an election to sue either the master or the owner upon such contracts. But after he has obtained judgment against one of these parties, he cannot maintain a second action against the other for the same cause.(*u*) An action commenced against one of them may, however, be discontinued before judgment, and fresh proceedings may be taken against the other.(*x*)

And creditor has election which party he will sue.

Unless exclusive credit given to one of them.

§ 87. This rule prevails only in the absence of satisfactory proof that exclusive credit was given, either to the owner or to the master, for it is of course open to the parties so to contract as to confine the responsibility to one or other of them. If, therefore, there is satisfactory proof that exclusive credit has been given to the one, the other will be completely discharged.(*y*) And if the party contracting has so conducted himself as to lead to the conclusion that exclusive credit has been given, either to the master or to the owner severally, he cannot assert his claim to the prejudice of a person whom he has misled into believing that he is exonerated.(*z*)

Evidence of exclusive credit.

§ 88. What will amount to satisfactory proof that an exclusive credit was given to the owner, or to the master, must necessarily depend upon the facts of the particular case.

If, however, the charge in the books of the creditor is made

(*q*) See Smith's Merc. Law., 10th ed. 172; Story on Agency, 261. The master's liability in respect of particular contracts and under particular statutes is dealt with below in the sections relating to those matters respectively.

(*r*) Smith's Merc. Law, *ubi sup.* Story, 294; *Hoskins* v. *Slayton*, Cas. Temp. Hard. 376; *Rich* v. *Coe*, Cowp. 636, 639; *Blaikie* v. *Stembridge*, 6 C. B. N. S. 894, 909; *The Jenny Lind*, L. R. 3 Adm. 529, 532.

(*s*) *Rich* v. *Coe*, Cowp. 636; *Hussey* v. *Christie*, 9 East, 426, 432.

(*t*) Abbott, Sh. 13th ed. 131. Story on Agency, 296.

(*u*) *Priestley* v. *Fernie*, 3 H. & C. 977.

(*x*) Per Bramwell, B., 3 H. & C. 984.

(*y*) Story on Agency, 296; *Stewart* v. *Hall*, 2 Dow. 29; *Farmer* v. *Davies*, 1 T. R. 108.

(*z*) Story on Agency, 296; *Wyatt* v. *Marquis of Hertford*, 3 East, 147; and see *Reed* v. *White*, 5 Esp. 122.

against the ship by her name, without naming either the master or the owner, both will be liable, for both may be equally deemed representatives of the ship.(*a*) So, if the ship is in the home port, and repairs or supplies are furnished there at the master's request, the mere fact of the presence of the owner at the port will not exonerate the master.(*b*) But if the contract is made directly with the owner, and not with the master, a strong presumption will arise that credit is given exclusively to the owner, a presumption which it would require cogent proof to rebut or overcome.(*c*) In the case of seamen's wages, however, such a presumption is much more difficult to establish.(*d*)

When ship is in home port.

If, on the other hand, the master executes an instrument under seal in his own name, he only, and not the owners, will be liable upon it;(*e*) and if he execute such an instrument on behalf of his owners without having been duly authorized by deed to do so, and indeed, if without authority, expressed or implied, he purport to bind the owners exclusively by any contract, the owners will not be liable; but the master himself will be liable, not upon the instruments or contract, but for a breach of warranty of his authority to make it.(*f*)

On deeds.

§ 89. An agent is personally liable to third persons for his own misfeasances and positive wrongs, but not, as a general rule, for mere nonfeasances or omissions of duty in the course of his employment. His liability in the latter cases is, generally speaking, solely to his principal.(*g*)

For wrongs. General rule. Agent only liable for his own positive wrongs.

Again, no action will ordinarily lie against an agent for the misfeasance or negligence of those whom he has retained for the service of his principal, by his consent or authority; unless, indeed, the particular act or neglect complained of was done by his orders or directions.(*h*) Except in the last-mentioned case, the action for such misfeasance or negligence must be brought either against the principal or against the actual wrong-doer.(*i*)

It has been said on very high authority (*k*) that masters of ships form an exception to this rule, and that, although they are the agents or servants of the shipowners, they are also, in many respects, deemed to be responsible as principals to third

Masters said to be an exception.

(*a*) Story on Agency, 297; where this question is more fully discussed, *Farmer* v. *Davies*, 1 T. R. 108; *Stewart* v. *Hall*, 2 Dow. 29.

(*b*) Story on Agency, 299; *Hussey* v. *Christie*, 9 East 426, 432; *Hoskins* v. *Slayton*, Cas. Temp. Hard. 376.

(*c*) Story on Agency, 299; *Farmer* v. *Davies*, 1 T. R. 108.

(*d*) See § 509, *inf.*

(*e*) Story on Agency, 155, 278; *Priestey* v. *Fernie*, 3 H. & C. 977.

(*f*) *Harrison* v. *Jackson*, citing *Horsley* v. *Rush*, 7 T. R. 207, 209; *Collen* v. *Wright*, 7 E. & B. 301; 8 *ib.* 647.; *Weeks* v. *Propert*, L. R. 8 C. P. 427. *Suart* v. *Haigh*, 95 L. T. J. 133 (H. L.)

(*g*) Story on Agency, 308; per Holt, C.J., *Lane* v. *Cotton*, 12 Mod. at p. 488 *Perkins* v. *Smith*, Sayer 40, 42.

(*h*) Story on Agency, 313; *Nicholson* v. *Mounsey*, 15 East, 384, 393.

(*i*) Story on Agency, 313; *Stone* v *Cartwright*, 6 T. R. 411.

(*k*) Story on Agency, 314.

persons, not only for their own negligences, nonfeasances and misfeasances, but also for the negligences, nonfeasances and misfeasances of the subordinate officers and others employed by and under them. This liability is founded, it is said, upon the doctrine of the maritime law, which treats the master, not merely as an agent, but also in some sort as an inferior principal and as a qualified owner of the ship, possessing for the time the executive power, and is supported by the additional reason that it induces the master to exercise greater watchfulness over the acts and conduct of the officers and crew, inasmuch as if he were not so liable, he might often by his connivance subject the shippers of goods, as well as the owners of the ship, to great losses and injuries, without their having any adequate redress. It is said to be on these grounds that by our law the master of a general or carrier ship, as well as the owner, is regarded and treated as a common carrier for hire, and is held responsible as such.(*l*) It seems, however, that in this country, whatever may be the law in the United States, it cannot be asserted that the responsibility of the master is so great as is above stated; and there is authority for saying that by the law of England the responsibility of the master for the negligence or misconduct of his subordinates is limited to cases of collision and of contract.(*m*)

Extent of his liability for wrongs.

As common carrier.

(*l*) Story on Agency, 315; *Mors* v. *Slue*, 1 Vent. 238; *infra* § 236.

(*m*) Per Willes, J., *Blaikie* v. *Stembridge*, 6 C. B. N. S. at p. 910. As to collisions, see Chap. XIV. *infra*.

CHAPTER III.

PREPARATION FOR THE VOYAGE.

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The Master's Duty to see that the Ship is Seaworthy.

To see that ship is fit for employment.

§ 90. BEFORE the commencement of the voyage, the duty of the master is identical with that of the owner.(*n*) It is the duty of the owners and master to take care, before setting sail, that the condition of the ship, as to hull, rigging, and appurtenances, and all provisions and supplies, is satisfactory and sufficient for the voyage in which she is engaged;(*o*) and that she is, at the commencement of her voyage, in a proper condition to perform it, and fit for the employment for which she is offered to the public, or to the charterer. In other words, and whether the charter party express it or not, they should take care that she is staunch, tight, and strong, properly furnished for the voyage on which she is about to sail, with tackle, anchors, cables, sails, rigging, and all necessary stores, the master having competent nautical skill, with an adequate and competent crew, and with a pilot, whenever a pilot is required by law, and that she is not

To see that ship is seaworthy.

(*n*) Maude & Pol. 4th ed. 127; and see Maclachlan, 4th ed. 426.
(*o*) 2 Parsons, Sh. 1.

improperly or too heavily laden; in short, that she is for such voyage *seaworthy*.(*p*) This duty is stipulated for in the usual form of charter party. It is an express term of the ordinary bill of lading.(*q*) It is implied in every voyage policy of marine insurance.(*r*)

As to charterer.

Shipper.

The usual stipulation in the charter party, or memorandum of charter party, is that she is "tight, staunch, and strong, and every way fitted for the voyage."(*s*) In the bills of lading signed by the master and in the policies of insurance, the vessel is described as "the good ship ——," which she cannot be unless she is in all respects seaworthy for the voyage. And it may now be regarded as settled that "in whatever way a contract for the conveyance of merchandise be made, where there is no agreement to the contrary, the shipowner is, by the nature of the contract, impliedly and necessarily held to warrant that the ship is good, and is in a condition to perform the voyage then about to be undertaken; or, in ordinary language, is seaworthy."(*t*) This warranty attaches at the commencement of the voyage, and it is not satisfied by seaworthiness at the commencement of the loading if owing to some accident the ship becomes unseaworthy before she sails.(*u*) And if after the commencement of the voyage the vessel becomes unseaworthy, it is the duty of the master, if opportunity offers, to have her repaired, or at least not to proceed on the voyage with the ship in an unseaworthy state. Otherwise, if loss or damage occur to the cargo by reason of such unseaworthiness, the shipowner will, in the absence of agreement to the contrary, be liable to an action by the cargo owner.(*x*)

§ 91. The obligation of a shipowner on an ordinary charter party is to supply a ship that shall be reasonably fit for the carriage of a reasonable cargo of the kinds of goods specified in the charter party. Thus, in the case of a contract for the

(*p*) *Wedderburn* v. *Bell*, 1 Camp. 1; *Lyon* v. *Mells*, 5 East, 428, 437; *Wilkie* v. *Geddes*, 3 Dow. 57; *Kopitoff* v. *Wilson* (improper stowage), 1 Q. B. D. 377; *Thin* v. *Richards* (insufficient coals) (1892), 2 Q. B. 141; 3 Kent's Com. 288; Maclachlan, 4th ed. 426; Maude & Pollock, 4th ed. 73; 2 Parsons, Sh. 1.

(*q*) Maclachlan, 4th ed. 427.

(*r*) Arnould, § 248. As to the powers of the Board of Trade to detain ships which are unseaworthy or overloaded, see 39 & 40 Vict. c. 80; *infra* § 529.

(*s*) But a warranty in a charter party that a ship is of a particular class, relates not to the commencement of the voyage, but merely to the time of entering into the charter party: *French* v. *Newgass*, 3 C. P. D. 163.

(*t*) *Kopitoff* v. *Wilson*, 1 Q. B. D. 377, 380; see also *Cohn* v. *Davidson*, 2 *ib.* 455, 459, and *Stanton* v. *Richardson*, 2 R. 7 C. P. 42; 9 *ib.* 390; in H. L., W. N. 1875, 154 (where the contract was by charter party); *Steel* v. *State Line*, 3 App Ca. 72; *Gilroy* v. *Price* (1893), A. C. 56; and *The Glenfruin*, 10 P. D. 103 (where the contract was by bill of lading); per Martin and Parke, BB., *Gibson* v. *Small*, 4 H. L. C. 353, at pp. 370, 404; and the judgments in *Readhead* v. *Midland Ry.*, L. R. 2 Q. B. 412; 4 *ib.* 382.

(*u*) *Cohn* v. *Davidson*, *ubi sup.*

(*x*) *Worms* v. *Story*, 11 Ex. 430; and see *Notara* v. *Henderson*, L. R. 5 Q. B. 346; 7 *ib.* 225.

Seaworthiness as regards cargo.

carriage of cattle, it is a breach of this obligation if the ship supplied is infected with disease from a previous cargo.(*y*) If the ship is not so fit, and cannot be made so within such a time as not to frustrate the object of the voyage, the charterer is absolved altogether,(*z*) and is, as it seems, entitled to sue the shipowner for not having accommodation for his goods in a ship that was fit to carry them.(*a*)

Charterer's remedy.

And in the case of a time charter, if the charterer cannot have the vessel in a seaworthy condition for the specified time, he is not bound to take her for a shorter time or substantially different time, and if he cannot get her for the specified time, he may throw up the charter.(*b*) To this extent at least the seaworthiness of the ship is a condition precedent to the charterer's liability to perform his contract.(*c*) It must be remembered, however, that the term "seaworthiness" has different meanings at different times, according to the different risks that have to be encountered. Thus a ship may well be seaworthy for the purpose of taking in cargo in port, though not so for the purpose of sailing on her voyage.(*d*) But the seaworthiness which the charterer requires is seaworthiness for the voyage, and the time at which the warranty attaches is, as we have seen, the commencement of the voyage;(*e*) it would seem to follow, therefore, that a charterer would not be justified in refusing to load a ship which was unseaworthy for the voyage at the time of loading, if the unseaworthiness was such as could be removed during the loading. In other words, he would not in such a case be entitled to insist on the ship being made seaworthy for the voyage before commencing to load her.(*f*) It is clear that compliance with an express warranty of seaworthiness at the port from which a ship is to sail to the port of loading, is not a condition precedent to the charterer's liability to load.(*g*) It is also clear that when the charterer has had the benefit of the charter party, unseaworthiness is not a condition precedent to the recovery either of freight,(*h*) or of general average, except in so far as the general average loss has been occasioned by the unseaworthiness.(*i*)

How far seaworthiness a condition precedent to charterer's liability.

(*y*) *Tattersall* v. *National S.S. Co.*, 12 Q. B. D. 297. The duty of cleansing and disinfecting ships which have been used for the carriage of cattle is now enforced by order of the Privy Council (Animals Order, 1886, Art. 100, Appx. No. 2), under the Contagious Diseases Animals Act, 1878, 41 & 42 Vict. c. 74, s. 32 (xxi., xxii.); see *Ismay* v. *Blake*, 66 L. T. 531.

(*z*) *Stanton* v. *Richardson*, L. R. 7 C. P. 421; 9 *ib.* 390; *Havelock* v. *Geddes*, 10 East, 536; *Tully* v. *Howling*, 2 Q. B. D. 182.

(*a*) *Steel* v. *State Line*, 3 Ap. Ca. 72, 76, 77.

(*b*) *Tully* v. *Howling*, *ubi sup.*

(*c*) See on this subject, Carver, Carriage by Sea, ss. 194, 195.

(*d*) See cases cited *infra* §§ 123, 127.

(*e*) *Cohn* v. *Davidson*, 2 Q. B. D. 455, 462.

(*f*) This conclusion would seem to follow from the judgment of Martin, B., in *Tarrabochia* v. *Hickie*, 1 H. & N. 183; cp. *Hogarth* v. *Miller*, (1891) A. C. 48.

(*g*) *Tarrabochia* v. *Hickie*, *ubi sup.*

(*h*) *Havelock* v. *Geddes*, 10 East, 536; *Tully* v. *Howling*, 2 Q. B. D. at p. 188; *Hogarth* v. *Miller*, *ubi sup.*

(*i*) *Schloss* v. *Heriot*, 14 C. B. N. S. 59; *Strang* v. *Scott*, 14 Ap. Ca. 681, 608.

§ 92. As the master and owners impliedly undertake to provide a ship tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage, the owner of the goods shipped on board will be entitled to compensation if he suffer loss or damage by reason of any insufficiency of these particulars at the commencement of the voyage, or by reason of delay arising from it.(*k*)

Shipper's remedy for unseaworthiness.

If there is a latent defect in the ship, unknown to the owner and undiscoverable upon examination, the owner and master will nevertheless be liable to the shipper for the damage occasioned by it.(*l*) And it is no excuse for the unseaworthiness of the ship, that the master has been himself deceived by the shipbuilder or repairer, and was ignorant of the defect.(*m*)

Latent defect.

§ 93. There is no implied warranty on the part of a ship owner contracting to carry passengers, or engaging seamen, that his ship is in fact seaworthy. His contract with passengers is that he will take due care—*i.e.* having regard to the nature of the contract, a high degree of care—and will exercise all vigilance to see that whatever is required for the safe conveyance of passengers is in fit and proper order.(*n*) And as regards seamen, it is provided by a recent statute,(*o*) that in every contract between the owner and the master, or any seaman or apprentice for service on board a ship, there is implied obligation, notwithstanding any agreement to the contrary, that the owner, his agents, and the master shall use all reasonable means to insure seaworthiness at the commencement of and throughout the voyage. This enactment and others relating to the safety and accommodation of seamen will be dealt with hereafter.(*p*)

Seaworthiness as regards passengers and seamen.

§ 94. In every "voyage policy," or insurance for a certain voyage, there is an *implied* warranty that the ship shall be seaworthy when the risk attaches, or in other words, that she shall be at that time in a fit state, as to repairs, equipments, crew, and all other respects, to encounter the ordinary perils of the risk insured at the time of its commencing.(*q*) In such a policy this implied warranty is a condition precedent upon the faith of which the underwriter undertakes his liability for loss during the continuance of the risk. If the condition is un-

Implied warranty of seaworthiness in voyage policies.

(*k*) Abbott, 13th ed. 376; *Lyon* v. *Mells*, 5 East, 428; as to the measure of damages, see *inf.* § 327.

(*l*) 3 Kent's Com. 288; *Cohn* v. *Davidson*, 2 Q. B. D. 455; *The Glenfruin*, 10 P. D. 103, 108.

(*m*) Holt on Shipping, 383; Maude & Poll. 4th ed. 73, 74, and cases *supra*.

(*n*) *Readhead v. Midland Railway Co.* L. R. 2 Q. B. 412; 4 *ib.* 381, 391. Mr. Maclachlan (4th ed. p. 341) lays it down however that there is an implied warranty of seaworthiness in the passenger's contract. See also 1 Parsons, Sh. 641. The statutory provisions for insuring seaworthiness in passenger ships will be found in Chap. XIII. below.

(*o*) 39 & 40 Vict. c. 80, s. 5.

(*p*) *Infra* §§ 527—529.

(*q*) Per Parke, B., *Dixon* v. *Sadler*, 5 M. & W. at p. 414; *The Quebec, &c. Co.* v. *The Commercial, &c.*, L. R. 3 P. C. 234; Arnould, § 248.

fulfilled, although the assured may have been ignorant of the unseaworthiness, and may have acted with perfect honesty and fairness,(r) the contract is at an end, and he cannot recover against the underwriter for any loss incurred during the continuance of the risk,(s) whether it can be traced to the unseaworthiness of the ship or not.(t) Indeed it is so essentially necessary a part of such a contract, that it can only be excluded from it by very explicit and clear terms. Therefore where in a voyage policy, losses from rottenness, inherent defects, and other unseaworthiness were expressly excepted, it was nevertheless held that seaworthiness at the commencement of the risk was implied as a condition precedent to any liability on the part of the underwriters.(u)

Time policies.

§ 95. In cases where it would be inconvenient or impossible to describe by local termini, it is usual to limit the risk in policies of insurance to a certain period of time. The policy in such a case is called a "time policy." In such policies, the risk insured is entirely independent of the voyage of the ship, and the policy covers any voyage whatever which the ship may make, and any loss or damage which she may sustain by the perils insured against, within the space of time which is specified in the policy.(x) In a time policy, framed in the usual terms, there is not any implied warranty that the ship shall be seaworthy at the commencement of, or at any period during, the risk.(y)

No implied warranty of seaworthiness.

What Seaworthiness means in Marine Insurance.

Meaning of implied warranty that ship is seaworthy.

§ 96. The warranty that the ship is seaworthy at the commencement of the voyage or risk is implied in every "voyage policy," whether on the ship, freight, or cargo, or on the commissions or profits to accrue upon the cargo, from the mere fact of effecting the insurance, independently of the particular terms used; and the assured thereby undertakes that the materials of which the ship is made, her construction, the qualifications of the master, the number and description of her crew, the tackle, sails, rigging, stores, equipment, and outfit generally, as well as her loading, stowage, and trim,(z) are such as to render her in

(r) *Douglas* v. *Scougall*, 4 Dow. 269, 276; *Lee* v. *Beach*, 1 Park, 468; *Daniels* v. *Harris*, L. R. 10 C. P. 1, 2.

(s) Per Lawrence, J., *Christie* v. *Secretan*, 8 T. R. 198; per Lord Ellenborough, *Wedderburn* v. *Bell*, 1 Camp. 2; *The Quebec Mar. Co.* v. *The Commercial, &c.*, L. R. 3 P. C. 234 (explaining *Weir* v. *Aberdeen*, 2 B. & Ald. (320).

(t) Per Erle, C.J., *Foley* v. *Tabor*, 2 F. & F. at p. 672; *The Quebec Mar. Co.* v. *The Commercial, &c.*, L. R. 3 P. C. 234; *Forshaw* v. *Chabert*, 3 B. & B. 158.

(u) *Quebec Marine Ins.* v. *Commercial, &c.*, L. R. 3 P. C. 234.

(x) Arnould on Ins. § 163.

(y) *Thompson* v. *Hopper*, 6 E. & B. 172; *Fawcus* v. *Sarsfield*, 6 E. & B. 192; *Dudgeon* v. *Pembroke*, 2 Ap. Cas. 284; *Gibson* v. *Small*, 4 H. L. Cas. 353; Arnould, § 254; *Michael* v. *Tredwin*, 17 C. B. 251.

(z) Arnould, § 257; *Weir* v. *Aberdeen*, 2 B. & Al. 320.

every respect reasonably fit for the proposed insured voyage or risk.(*a*) But this or any other implied obligation may of course be modified, enlarged, or superseded by express agreement; as where, for instance, it is provided that any insufficiency of the ship, not known to the assured, shall not prejudice the insurance.(*b*) And if the underwriters by a clause in the policy have admitted that the ship was seaworthy when she sailed, they cannot set up the contrary in an action on the policy,(*c*) unless the insurers obtained the admission by fraud. The standard of seaworthiness was gradually raised during the first half of the century.(*d*)

How meaning of seaworthiness varies according to the risk.

§ 97. The term "seaworthiness," therefore, in marine insurance expresses a relation between the state of the ship and the perils it has to meet in the situation it is in;(*e*) and means, that the ship is in such a state, as to repair, equipment, and crew, as to be able to encounter the ordinary perils of the adventure in which the policy states it to be then engaged.(*f*) Accordingly, the meaning of "seaworthiness," and what constitutes it, varies in each particular case, according to the class of ship, the positions in which she may be placed, and the requirements of the particular navigation or adventure on which she is about to embark and which is the subject of insurance. It may vary, also, according as the policy is on ship, or on cargo or freight.(*g*) Thus, what is seaworthiness for the coasting or West Indian trade, is different to that which constitutes seaworthiness for the Greenland Seas or North-West Passage.(*h*) The ship may be fit for port or river risks, and therefore seaworthy for such risks, even though not so for a voyage.(*i*) Seaworthiness for the voyage is one thing; seaworthiness in port is quite another; and seaworthiness for inland navigation may be altogether different. Thus a ship under a policy "*at and from*" might be seaworthy in harbour, while undergoing repairs, although much out of repair, and although she might not be seaworthy for the voyage if she sailed in that condition.(*k*) Again, she may be seaworthy for one voyage, or

(*a*) Phillips on Ins. 695; *Dixon* v. *Sadler*, 5 M. & W. 405; *Hedley* v. *Pinkney, &c.* (1892), 1 Q. B. 58, 64; *Oliver* v. *Cowley*, 1 Park Ins. 470; *Daniels* v. *Harris*, L. R. 10 C. P. 1, 2.

(*b*) Phillips on Ins. 698. See *Vallejo* v. *Wheeler*, Cowp. at p. 148.

(*c*) *Parfitt* v. *Thompson*, 13 M. & W. 392.

(*d*) Per Story, J., 4 Mason (Amer.) 441; Phillips, Ins. 719; *Burges* v. *Wickham*, 3 B. & S. at p. 693, per Blackburn, J.

(*e*) Per Erle, C.J., *Gibson* v. *Small*, 4 H. L. at p. 384; per Blackburn, J., 3 B. & S. 692; *Annen* v. *Woodman*, 3 Taunt. 299.

(*f*) Per Alderson, B., *Gibson* v. *Small*, 4 H. L. Cas. at p. 390.

(*g*) *Daniels* v. *Harris*, L. R. 10 C. P. 1, 7, 8; Phillips, Ins. § 728.

(*h*) *Burges* v. *Wickham*, 3 B. & S. 669, 683; and see per Erle, C.J., *Foley* v. *Tabor*, 2 F. & F. at p. 671.

(*i*) Per Parke, B., *Dixon* v. *Sadler*, 5 M. & W. 414; per Alderson, B., *Gibson* v. *Small*, 4 H. L. at p. 393; per Cur. *Cohn* v. *Davidson*, 2 Q. B. D. 455, 461; and cp. *Hogarth* v. *Miller*, (1891) A. C. 48.

(*k*) *Forbes* v. *Wilson*, 1 Park Ins. 472; *Hibbert* v. *Martin*, 1 Park Ins. 473; *Parmeter* v. *Cousins*, 2 Camp. 235; *Annen* v. *Woodman*, 3 Taunt. 299; Arnould, § 255.

for one stage of a voyage, but not for another, or for one class of cargo, but not for another.(*l*)

According to the subject-matter of insurance.

Again, a ship carrying a deck cargo of such a nature as can be easily jettisoned, and which but for the ease with which it can be jettisoned would render her unfit to encounter the ordinary perils of the contemplated adventure, may be seaworthy for the purposes of a policy on hull, or on under-deck cargo or its freight, though unseaworthy for the purposes of a policy on the deck cargo or its freight.(*m*) The mere fact that goods are stowed on deck in breach of a statute, no certificate of under-deck stowage being obtained, as required by the statute, does not amount to unseaworthiness.(*n*)

Deck cargo.

According to class of ship.

In some cases, the class of ship may be such as will not admit of being put into that condition of seaworthiness for the contemplated voyage which is necessary in ordinary cases. This occurs where a vessel has been built for river navigation in foreign parts, to which she has to be sent over sea. In such a case, if the underwriter accept the risk with full information both of the class of the ship and of the intended voyage, the assured satisfies the warranty of seaworthiness by making her as seaworthy for the voyage as is reasonably practicable with such a ship.(*o*) But he is bound to do this much. Therefore, in a case of insurance on salvage, where the ship was described in the "slip" as having "been abandoned by her original crew and taken into Terceira," it was held that this did not release the assured from the warranty, or from his obligation under it.(*p*)

Sufficient if ship seaworthy at commencement of risk;

§ 98. This implied warranty of seaworthiness relates only to the commencement of the risk insured. There is no implied warranty that the ship shall continue seaworthy throughout the voyage.(*q*) Accordingly, when the ship is seaworthy at the commencement of the voyage, but is afterwards lost by perils insured against, consequent upon subsequent unseaworthiness, occasioned by the negligence or mistakes of the master and crew, without fraud, the underwriters are liable for such loss.(*r*)

or of each of several different stages.

If the assurance attaches before the voyage commences, it is

(*l*) *Biccard* v. *Shepherd*, 14 Moo. P. C. 471; *Foley* v. *Tabor*, 2 F. & F. 662.

(*m*) *Daniels* v. *Harris*, L. R. 10 C. P. 1, 8.

(*n*) *Wilson* v. *Rankin*, L. R. 1 Q. B. 162; decided under 16 & 17 Vict. c. 107, ss. 170–172 (since repealed). See now 39 & 40 Vict. c. 80, ss. 23, 24; *infra* § 252.

(*o*) *Burges* v. *Wickham*, 3 B. & S. 669; *Clapham* v. *Langton*, 34 L. J. Q. B. 46.

(*p*) *Knill* v. *Hooper*, 2 H. & N. 277.

(*q*) Per Lord Mansfield, *Bermon* v. *Woodbridge*, 2 Doug. 788; *Eden* v. *Parkinson*, *ibid.* 735; per Lord Eldon, *Watson* v. *Clark*, 1 Dow. 344; *Parker* v. *Potts*, 3 Dow, 23; per Parke, B., *Dixon* v. *Sadler*, 5 M. & W. 415; Arnould, § 249.

(*r*) Phillips on Ins. 733; *Dixon* v. *Sadler*, 5 M. & W. 405; 8 M. & W. 895; *Shore* v. *Bentall*, 7 B. & C. 798, n.; *Busk* v. *Royal, &c., Co.*, 2 B. & Ald. 73; *Walker* v. *Maitland*, 5 B. & Ald. 171. See further as to the distinction between unseaworthiness and negligence, *Hedley* v. *Pinkney, &c.*, (1892) 1 Q. B. 58; *Steel* v. *State Line*, 3 Ap. Ca. 72, 90, per Lord Blackburn.

enough that the state of the ship be commensurate to the then risk. And if the voyage be such as to involve several distinct stages of navigation, and to require a different complement of men, or a different state of equipment in the different parts of it, as if it were a voyage down a canal or a river, and thence across the open sea, then the warranty will be satisfied if the ship, at the commencement of each stage of the navigation, is properly manned and equipped for it;(*s*) but, in such a case, she must be properly equipped and in all respects seaworthy for each stage at the time when she enters upon it, or the warranty is not complied with.(*t*)

Examples.

Thus, a steamer insured *at and from Lyons to Galatz,* to sail on or before the 15th of August, sailed from Lyons on the 24th of July, fully equipped for the river voyage, but with only a *river* crew and master, and without her masts, anchors, and other heavy articles which were necessary for her sea voyage, but which it was impossible for her to carry on board during the river voyage. At Arles, she took on board her master for the sea voyage, and some of her seagoing crew, and she was fitted out in other respects for the voyage to Marseilles, where she had to call for a licence. At Marseilles she was rendered seaworthy in respect of her crew and equipment, without unreasonable delay, and she sailed from Marseilles on her voyage on the 23rd of August. It was held that when she sailed from Lyons she was in a seaworthy condition commensurate with the risk.(*u*)

So under a policy on copper ore by *The Admiral Collingwood,* at and from the anchorage off Hondeklip Bay and Port Nolloth to Swansea, the vessel shipped 154 tons of ore at Hondeklip Bay, and sailed thence to Port Nolloth, where she shipped 250 tons of ore additional. Soon after sailing thence on her voyage to Swansea she became leaky, and finally foundered. It was held that there were two risks insured, and that the ship being seaworthy for the voyage to Swansea at the commencement of the first, but unseaworthy through overloading at that of the second, the underwriters were liable for the ore shipped at Hondeklip, but not for that shipped at Port Nolloth. If the ship had been lost before arriving there it would have been no defence to the underwriters that she was not at that time fit to carry all that might be put on board her at Port Nolloth. The warranty having been complied with at Hondeklip as to 154 tons, the subsequent

(*s*) Per Parke, B., *Dixon* v. *Sadler,* 5 M. & W. 414; per Alderson, B., *Gibson* v. *Small,* 4 H. L. 390; *Biccard* v. *Shepherd,* 14 Moo. P. C. 471; *Quebec Ins. Co.* v. *Commercial, &c.,* L. R. 3 P. C. 234.

(*t*) *The Quebec, &c., Co.* v. *The Commercial, &c., ubi sup.*; *Thin* v. *Richards,* (1892), 2 Q. B. 141.

(*u*) *Bouillon* v. *Lupton,* 15 C. B. N. S. 113. See further as to this case, *infra* § 138.

improper conduct of the master could not affect the right to recover *pro tanto*.(x)

Onus of proof of unseaworthiness.

§ 99. The onus of proving that the ship was unseaworthy is on the underwriters. Thus, if she is lost long after sailing, or under such circumstance that the loss may be fairly attributed, *primâ facie*, to the action of the winds and waves, or other perils insured against, then it is for the underwriters to make out that she was not seaworthy at the commencement of the risk.(y) On the other hand, where a ship, soon after sailing, founders, or becomes so leaky or disabled as to be unable to proceed, without any cause having occurred subsequent to sailing sufficient to account for her mischance, the presumption is that it was caused by her condition at the time of sailing, and that she was not then seaworthy, and in such case the onus of proving that she was then seaworthy would be on the insured.(z) And of course, even the prevalence of stormy weather, dangerous seas, stiff breezes, or severe gales, is not enough to account for the loss, if the state of the ship, when examined, cannot be explained by such causes.(a)

Seaworthiness as regards the Master, Crew, and Pilot.

§ 100. Every ship, at the time of sailing on the voyage insured, must be properly provided for the said voyage with (1) a master and mate of competent nautical skill, (2) a crew sufficient to navigate her on the voyage insured, and (3) a pilot, whenever required by law; but there is no implied warranty that the master, crew, or pilot will do their duty.(b)

As regards the master;

The master must be sufficiently well acquainted with the usual course of navigation on the voyage insured to be able to conduct the ship in safety through her ordinary perils. If he is grossly ignorant, the ship is not seaworthy and the underwriters are discharged.(c) Thus in *Tait* v. *Levi*,(d) a ship was insured on a voyage "*from Cork to the ship's loading port or ports on the coast of Spain, within the Straits of Gibraltar, including Tarragona, and not higher up the Mediterranean.*" And the master, through entire ignorance of the coast, mistook Barcelona for Tarragona, and was captured in endeavouring to enter the former port, which is higher up the Mediterranean than Tarragona, and was then in possession of the forces of Napoleon. This was held to be a breach of the implied warranty to provide

(x) *Biccard* v. *Shepherd*, 14 Moo. P. C. 471.

(y) Per Blackburn and Lush, J.J., *Wilson* v. *Jones*, L. R. 2 Ex. 143.

(z) *Watson* v. *Clark*, 1 Dow. 336, 347, 8; 1 Park Ins. 469; *Parker* v. *Potts*, 3 Dow. 23; per Willes, J., *Davidson* v. *Burnand*, L. R. 4 C. P. 120; *Wilson* v. *Jones*, *ubi sup.*

(a) *Douglas* v. *Scougall*, 4 Dow, 269.

(b) Per Parke, B., *Dixon* v. *Sadler*, 5 M. & W. 414.

(c) Arnould, § 260: Phillips on Ins. 707.

(d) 14 East, 481.

a master of reasonably competent skill and knowledge, and the underwriters were held to be discharged from their liability.

and the mate.

§ 101. But besides the necessity that the master should be competent, a ship is not deemed seaworthy for a long voyage, unless there is some person on board who is qualified to take the place and discharge the duties of the master, in the event of the master becoming incapacitated during the voyage.

Thus, in *Clifford* v. *Hunter*,(*f*) an insurance was effected on a voyage "*from Mauritius to London.*" On sailing from Mauritius the master was very ill, and on the day after sailing, finding himself incompetent from increased illness to continue to take charge of the ship, he inquired of his officers whether they could take the ship to England, but finding no one competent to undertake it, he put back. It was found by the jury, under the direction of Lord Tenterden, that the ship on sailing was not seaworthy, as, considering the length of the voyage, she ought to have had on board another person besides the master capable of taking the command in case of the master's illness or death.(*f*)

As regards the crew.

§ 102. The assured, under his implied warranty, is bound at the commencement of the risk, to provide a crew sufficient in number and of competent skill to navigate the ship on the voyage insured, and to discharge the usual duties, and to meet the usual exigencies of such a voyage.(*g*) Otherwise, the warranty is not complied with, and the underwriters are not liable. But there is no implied warranty that the master and crew shall do their duty during the voyage.(*h*)

Thus, in *Forshaw* v. *Chabert*,(*i*) a ship was insured "*at and from Cuba to Liverpool*," without any leave given to touch and stay in the original policy. The master having lost some of his outward crew by sickness and desertion at Cuba, and having found it impossible to engage there ten men, his proper complement for Liverpool, sailed from Cuba with only eight men engaged for Liverpool and two for Montego Bay (Jamaica). He touched at the latter place, landed the two men, and having procured others to supply their place proceeded on his voyage to Liverpool. It was held that the ship was not seaworthy when she sailed from Cuba for a voyage *to Liverpool*, as she ought then to have had on board a full complement of men engaged for the whole voyage.

If, however, the crew be sufficient when the ship sails on the

(*f*) 1 M. & M. 103; 3 C. & P. 18.

(*g*) Phillips on Ins. 709; *Busk* v. *Royal, &c., Co.*, 2 B. & Al. 73, 83; *Shore* v. *Bentall*, 7 B. & C. 798, n.

(*h*) Per Parke, B., *Dixon* v. *Sadler*, 5 M. & W. 414.

(*i*) 3 B. & B. 158.

voyage insured, the implied warranty is fully satisfied, unless it be a voyage of several stages differing in risk, and consequently in the description of crew required on board. The assured does not contract that the ship shall continue to be properly manned throughout the voyage.(*k*)

As regards pilots: at commencement of risk.

§ 103. The general rule being that the assured is bound to have the ship seaworthy at the commencement of the risk, it is the master's duty on sailing, at the commencement of the risk, from a port where there is an establishment of pilots, and where law or usage or the nature of the navigation requires a pilot, to take one on board. And the warranty of seaworthiness will be broken if he does not.(*l*) But when the master or mate is possessed under 17 & 18 Vict. c. 104 s. 340, or s. 355(*m*), of a pilotage certificate applicable to the port or district, it is not necessary to have a pilot on board. The master's duty with respect to the employment of a pilot will be further considered below.(*n*) It will suffice here to state the result of the cases in the words of the late Sir Joseph Arnould(*o*):

As regards pilots: after commencement of risk.

"The law seems to be, that supposing the ship to have been seaworthy when she sailed, and provided with a competent master and crew, the underwriter is liable for all loss proximately caused by the perils of the sea, although remotely occasioned by the negligence or misconduct of the master in *entering*, without a pilot, an intermediate port where pilots are kept, and *usage* requires one to be taken on board for that purpose;(*p*) *à fortiori*, he will be so liable if the master, on arriving off the port, has done his best to procure a pilot to come off, and has only entered the harbour without one, when it became the wisest course for him, as a prudent and skilful man, to do so.(*q*)

If not only usage, but the positive regulations of an Act of Parliament, require a pilot to be taken on board on entering either an intermediate or a home port, it is unseaworthiness to enter such port without one.(*r*)

In all cases where it is necessary, either by law or usage, for

(*k*) Arnould, § 260 (2). And see cases cited *supra*, § 98.

(*l*) Per Parke, J., *Phillips* v. *Headlam*, 2 B. & Ad. 383; Phillips on Ins. 712.

(*m*) *Supra*, §§ 45, 48.

(*n*) *Infra*, Chap., XII.

(*o*) Arnould, § 260 (3); see also Phillips, 715, 716.

(*p*) *Phillips* v. *Headlam*, 2 B. & Ad. 380.

(*q*) *Ibid.*

(*r*) *Law* v. *Hollingsworth*, 7 T. R. 160. This decision is not easy to reconcile with the principles stated above (§ 98) and has been commented on in the following language by Tindal, C.J. (*Sadler* v. *Dixon*, 8 M. & W., at p. 900): "The decision may be maintainable on the ground of an implied warranty to observe the positive regulations of an Act of Parliament; but if it is to be taken as an authority that the implied warranty on the part of the assured extends to acts of negligence on the part of the master and crew throughout the voyage, we think it cannot be supported against the weight of the later authorities." See also per Parke, B., S. C., 5 M. & W. at p. 415, and per Patteson, J., *Hollingworth* v. *Brodrick*, 7 A. & E. at p. 44.

the master to have a pilot on board *in going out* of an intermediate port, or in clearing from his outport homewards, it will be unseaworthiness not to take one, as it is in such cases always in his power to do so."(*s*)

Seaworthiness as regards Hull, Rigging, Loading, and Stores.

Seaworthiness as regards hull, rigging, loading, and stores.

§ 104. To render the ship seaworthy for the service or use contemplated by the insurance, she must be sufficiently staunch and sound, and adequately constructed, sufficiently furnished with sails, tackle, rigging, cables, anchors, stores, supplies, and proper ballast;(*t*) her cargo must be properly stowed; and she must not be overloaded.(*u*)

Examples.

In the following cases, the ship was held to be unseaworthy:— Where the timbers and ironwork were decayed and wrought loose;(*x*) where the ship was constructed without knees, and was insured for a foreign voyage;(*y*) where the maintop-gallant-sail and studding-sails were so rotten and unserviceable that the ship fell behind the convoy and was lost;(*z*) and where the best bower anchor and the cable of the small bower were defective.(*a*)

In *The Quebec Marine Insurance Co.* v. *The Commercial Bank of Canada*,(*b*) a ship was insured "*at and from Montreal to Halifax*," in Nova Scotia. She sailed with a defective boiler. The defect did not appear until she had passed into salt water. It then became necessary to put back and repair the boiler. After sailing again, she encountered bad weather and was lost by perils of the seas. It was held that she was not seaworthy when she passed into salt water, even if she was at a previous stage, and that the underwriters were not liable.(*b*)

As regards loading.

§ 105. A ship is unseaworthy if she is so heavily or improperly loaded, or if the cargo is so badly stowed, at the commencement of the voyage insured, as to render her unfit to perform the voyage insured and encounter its ordinary perils;(*c*) or if the risk is materially increased by reason of difficulty in navigating the ship caused either by overloading or bad stowage.(*d*)

In *Daniels* v. *Harris*,(*e*) an action on a policy "on wine in casks on or under deck," the wine having been all stowed on deck and jettisoned, it was held that although, owing to the facility

(*s*) Per Lord Tenterden, 2 B. & Ad. 382; sed qu., unless by usage this sailing out constitutes the commencement of a new intermediate voyage, or a new stage in the voyage.

(*t*) As to the master's duty with regard to ballast, see § 247 *infra*.

(*u*) Phillips on Ins. 700-706.

(*x*) *Douglas* v. *Scougall*, 4 Dow, 269, 277.

(*y*) *Watt* v. *Morris*, 1 Dow, 32; cp. *Parker* v. *Potts*, 3 Dow, 23, 32.

(*z*) *Wedderburn* v. *Bell*, 1 Camp. 1.

(*a*) *Wilkie* v. *Geddes*, 3 Dow, 57.

(*b*) L. R. 3 P. C. 234.

(*c*) *Biccard* v. *Shepherd*, 14 Moo. P. C. 471.

(*d*) Per Erle, C.J., *Foley* v. *Tabor*, 2 F. & F. at p. 672.

(*e*) L. R. 10 C. P. 1.

with which it could be got rid of, the wine would have caused no danger to the ship, yet if the incumbrance was such "that the ship could only be made safe for or in an ordinary voyage by the destruction of the insured cargo," a jury would not be justified in saying that the ship was seaworthy for the purposes of a policy on that cargo. The master's duties with respect to receiving and stowing the cargo, and the Acts of Parliament relating to this subject, form the subject of later sections.(*f*)

As regards stores and supplies.

§ 106. Stores and supplies for the voyage insured are so important an element in seaworthiness, that it has been said that the assured is as much bound to show that he has provided proper medicines and necessaries for the voyage, as to establish the tightness of the ship.(*g*) Where the rules of the Insurance Society, by which a ship was insured, required the managing underwriters to survey the hull and materials of each ship once a year, and to order whatever stores or repairs they deemed necessary, and declared that unless such stores and repairs were provided, "the ship should not be insured," it was held that the effect of a failure to comply with an order of the managing underwriters to provide such stores and repairs was that the ship must be considered unseaworthy and the policy void.(*h*)

The Master's Duty in Equipping the Ship for Sea.

To see that nautical instruments are in good condition.

§ 107. The master should take care that, for a foreign voyage, his nautical instruments are in proper condition—his compasses duly adjusted(*i*) and corresponding—his chronometer properly rated or rectified according to Greenwich time—his day and night glasses duly cleaned and in serviceable order—his log and deep-sea lines fit for service—and correct charts of the course of the voyage on board.(*k*)

Medical stores.

Medicines and medical stores are the subject of statutory enactment,(*l*) and must be provided according to the scale or scales published from time to time by the Board of Trade. And in the case of ships going through the Suez Canal or round the Cape of Good Hope or Cape Horn, the provisions intended for the crew are subject to inspection by the officer of the Board, who may detain the ship in case of deficiency.(*m*)

(*f*) *Infra* §§ 247–259.

(*g*) *Woolf* v. *Claggett*, 3 Esp. 257, 258. In the United States it has been held, that a ship not properly supplied with fuel and candles is not seaworthy: *Fontaine* v. *Phœn. Ins. Co.*, 10 Johnson's N. Y. R. 58. Phillips, 793. For the provisions of the Customs Act with regard to stores, see 39 & 40 Vict. c. 36, 55, ss. 97, 126; *infra*, Chap. XVII.

(*h*) *Stewart* v. *Wilson*, 12 M. & W. 11. Cp. *Harrison* v. *Douglas*, 3 A. & E. 396.

(*i*) This is required by 17 & 18 Vict. c. 104, s. 301 (2), for passenger steamships; see *infra* § 594.

(*k*) Lee's Manual, 68.

(*l*) 30 & 31 Vict. c. 124, s. 4; *infra* §§ 525–527.

(*m*) 55 & 56 Vict. c. 37, s. 3; *infra* § 524.

§ 108. It is the duty of the master as well as the owner of every British ship, to see that his ship is provided, in accordance with rules(*n*) made by the Board of Trade, with such boats, life jackets, and other life-saving appliances, as, having regard to the service on which the ship is employed, and the avoidance of undue encumbrance of her deck, are best adapted for securing the safety of her crew and passengers.(*o*)

Duty to provide boats and life-saving appliances.

The penalty for—(1) proceeding on any voyage or excursion without the appropriate life-saving appliances; (2) permitting any of the appliances to become lost or rendered unfit for service in the course of the voyage through wilful fault or negligence; (3) wilfully neglecting, in case any of such appliances are accidentally lost or injured in the course of the voyage, to replace or repair the same on the first opportunity; or, (4) not keeping such appliances so as to be at all times fit and ready for use, is, for the owner, if he is in fault, a sum not exceeding one hundred pounds, and for the master, if he is in fault, a sum not exceeding fifty pounds.(*p*)

Penalty.

Before sailing, the ship should also be provided with proper and adequate means and materials for exhibiting the lights, and with the appliances for making fog signals required by the regulations for preventing collisions at sea.(*q*)

Duty to provide means for lights and fog-signals.

§ 109. Board of Trade surveyors, or other persons appointed by the Board for the purpose, are authorised to inspect ships in order to see that they are properly provided with life-saving appliances, and with lights and the means of making fog signals. A surveyor who finds that any ship is not so provided, is required to give the master or owner a notice in writing pointing out the deficiency, and what is in his opinion necessary to remedy it; and to communicate the notice to the Collector of Customs at any port in which the ship may seek to clear, or where her transire is to be obtained; and in that case the collector may not clear her outwards, or grant a transire, or allow her to proceed to sea without a certificate of such surveyor or other person that she is properly provided with life-saving appliances in pursuance of the rules, or with lights and the means of making fog-signals in pursuance of the regulations, as the case may be.(*r*)

Provisions for enforcing rules and regulations.

(*n*) See Appendix No. 3.

(*o*) 51 & 52 Vict. c. 24, ss. 1–3. This statute applies (s. 6) to all British ships other than fishing boats, registered under the Sea Fisheries Act, 1868, as to which see 17 & 18 Vict. c. 104, ss. 292–294.

(*p*) *Ibid.*, s. 4.

(*q*) See Collisions *infra*, Chap. XIV.

(*r*) 51 & 52 Vict. c. 24, s. 5, as to life-saving appliances; 25 & 26 Vict. c. 63, s. 30, as to lights and fog signals. By 39 & 40 Vict. c. 80, s. 14 (§ 602, *infra*), an appeal lies from the refusal of a certificate under the latter section. There is, it seems, no appeal from the refusal of a certificate with respect to life-saving appliances.

Equipment of steamships and passenger ships.

§ 110. A vast number of provisions have been enacted as to surveys of, and certificates for, steamships and passenger ships, and as to their build, construction, and equipment. These will be considered in treating of "Passengers."(s) It is sufficient here to mention the following provisions of general application, viz.: that every seagoing steam-ship (other than a tug) must be provided with a firehose capable of being connected with the engines, under the same penalties as are imposed for neglect to provide life-saving appliances;(t) and that any person who places an undue weight on the safety-valve is liable to a penalty of £100.(u)

Firehose.

Penalty for overweighting safety-valve.

Compulsory Loadline and Draught of Water.

Compulsory loadline.

§ 111. Before sailing, the master must also see that his ship is marked with deck and loadlines as required by the Merchant Shipping Acts, 1876(x) and 1890,(y) and that she is not so loaded that the loadline will be submerged in salt water: otherwise he will expose himself to a penalty of £100, and his ship to the risk of detention by the officers of the Board of Trade. The following sections relate to this subject. By the Act of 1876—

Marking of decklines.

25. (1.) Every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side amidships,(z) or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking.

The lines shall be white or yellow on a dark ground, or black on a light ground.

Marking of loadline on foreign-going British ships.

26. With respect to the marking of a loadline on British ships the following provisions shall have effect:

(1) The owner of every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall, before entering his ship outwards from any port in the United Kingdom upon any voyage for which he is required so to enter her, or, if that is not practicable, as soon after as may be, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre:

(s) *Infra*. Chap. XIII.

(t) 17 & 18 Vict. c. 104, s. 301 (3); *infra* § 594.

(u) *Ibid.*, s. 302; *infra* § 594.

(x) 39 & 40 Vict. c. 80.

(y) 53 Vict. c. 9.

(z) Amidships means "the middle of the length of the load water-line as measured from the fore side of the stem to the aft side of the stern-post" (53 Vict. c. 9, s. 5).

(2) (*a*) The centre of this disc shall [be placed at such level below the deck-line marked under the provisions of this Act as may be approved by the Board of Trade, and shall] indicate the maximum load-line in salt water to which [it shall be lawful] to load the ship.

(3) He shall also, upon so entering her, insert in the form of entry delivered to the collector or other principal officer of Customs a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre:

(4) If default is made in delivering this statement in the case of any ship, any officer of Customs may refuse to enter the ship outwards:

(5) The master of the ship shall enter a copy of this statement in the agreement with the crew before it is signed by any member of the crew, and no superintendent of any mercantile marine office shall proceed with the engagement of the crew until this entry is made:

(6) The master of the ship shall also enter a copy of this statement in the official log book:

(7) When a ship has been marked as by this section required, she shall be kept so marked until her next return to a port of discharge in the United Kingdom.

Marking of load-line in case of coasting vessels.

27. With respect to the marking of a load-line on British ships employed in the coasting trade, the following provisions shall have effect:

(1) The owner of every British ship employed in the coasting trade on the coasts of the United Kingdom (except ships under eighty tons register employed solely in that trade) shall, before proceeding to sea from any port, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre:

(2) (*b*) The centre of this disc shall [be placed at such level below the deck-line marked under the provisions of this Act as may be approved by the Board of Trade, and shall] indicate the maximum load-line in salt water to which [it shall be lawful] to load the ship, until notice is given of an alteration:

(3) He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the collector or other principal officer of Customs of the port of registry of the ship a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre:

(4) The owner, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the collector or other principal officer of Customs of the port of registry of the ship notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the

(*a*) As amended by 53 Vict. c. 9, s. 1. See the provisions of that Act prescribing the mode of fixing the load-line *infra*.

(*b*) See preceding note.

distance between the centre of the disc and the upper edge of each of the deck-lines:

(5) If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the owner shall be liable to a penalty not exceeding one hundred pounds:

(6) When a ship has been marked as by this section required, she shall be kept so marked until notice is given of an alteration.

Penalty for offences in relation to marks on ships.

28. Any owner or master of a British ship who neglects to cause his ship to be marked as by this Act required, or to keep her so marked, or who allows the ship to be so loaded as to submerge in salt water the centre of the disc,(*c*) and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy, shall for each offence incur a penalty not exceeding one hundred pounds.

If any of the marks required by this Act is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding one hundred pounds.

§ 112. With regard to the mode of fixing the compulsory loadline, the Merchant Shipping Act, 1890,(*d*) provides as follows:—

Position of disc.

1.—. . . . the position of the disc shall be fixed in accordance with the tables (*e*) framed by the Load Line Committee appointed before the passing of this Act, subject to such allowance as may be made necessary by any difference between the position of the deck-line marked under the provisions of the Merchant Shipping Act, 1876, and the position of the line from which freeboard is measured under the said tables, and subject also to such modifications, if any, of the tables and the application thereof as may from time to time be sanctioned by the Board of Trade.

39 & 40 Vict. c. 80.

In sanctioning any such modifications the Board of Trade shall have regard to any representations which may be made to them by any corporation or association for the survey or registry of shipping for the time appointed or approved by the Board of Trade for the purposes of this Act.

Regulations.

2.—(1.) The Board of Trade shall appoint the Committee of Lloyd's Register of British and Foreign Shipping, or, at the option of the owner of the ship, any other corporation or association for the survey or registry of shipping, approved by the Board of Trade, or any officer of the Board of Trade specially selected by the Board for that purpose, to approve and certify on their behalf from time to time the position of any such disc as aforesaid, and any alteration thereof, and may appoint fees to be taken in respect of any such approval or certificate.

(2.) The Board of Trade may make regulations—

(*c*) A ship so loaded is liable to detention by the Board of Trade, 55 & 56 Vict. c. 37, s. 1; § 529 *infra*.

(*d*) 53 Vict. c. 9. Sects. 3 & 4 enable Her Majesty, by Order in Council, to relieve the ships of (1) British possessions whose governments have passed a similar and equally efficacious enactment, and (2) foreign States whose laws for the prevention of overloading are equally efficacious with our own, from compliance with the statute.

(*e*) These tables, with notes on their application, are published in Board of Trade Memoranda (LL. 11 and LL. 12), dated respectively Aug. 1890 and Nov. 1892.

(a) determining the lines or marks to be used in connexion with the disc, in order to indicate the maximum load-line under different circumstances and at different seasons, and declaring that the provisions of the Merchant Shipping Act, 1876, are to have effect as if any such line were drawn through the centre of the disc;

(b) as to the mode in which the disc and the lines or marks to be used in connexion therewith are to be marked or affixed on the ship, whether by painting, cutting, or otherwise;

(c) as to the mode of application for, and form of certificates under, this Act; and

(d) requiring the entry of such certificates, and other particulars as to the draught of water and freeboard (*g*) of the ship, in the official log-book of the ship, or other publication thereof on board the ship, and as to delivering copies of such entries.

All such regulations shall, while in force, have effect as if enacted by this Act.(*h*)

And by 55 & 56 Vict. c. 37, s. 2—

Penalty for default in complying with regulations as to freeboard.

If any person makes default in complying with any regulation made by the Board of Trade in pursuance of the Merchant Shipping Act, 1890, with respect to the entry, publication, or delivery of copies of certificates or other particulars as to the draught of water and freeboard of a ship, he shall for each such default incur a penalty not exceeding one hundred pounds.

Ship's draught of water to be recorded.

§ 113. The master must also, before sailing, record the ship's draught of water, and the extent of her "clearside," or freeboard, in the official log, if any. For failure to produce such record when required he may incur a penalty of £20.(*i*) He must also permit any person appointed to record these particulars on behalf of the Board of Trade, to come on board and inspect and measure for that purpose under a penalty for impeding or obstructing him, not exceeding £5 for each offence.(*k*)

Penalty.

Special provision in the case of grain cargoes.

§ 114. In the case of grain cargoes laden at Mediterranean or Black Sea ports for places outside the Straits of Gibraltar, or at ports on the coast of North America, he must also give to the British Consular officer, or, if in a British Possession, to the principal officer of Customs, at the ship's final port of loading, unless such port is specially exempted from these provisions, a notice stating her draught and clearside after completion of loading, together with particulars of the kind and quantity of grain, the mode of stowage, and the precautions taken against shifting.(*l*)

Penalty.

The maximum penalty for failing to deliver such notice, or for wilfully making a false statement or omitting a material particular therein, is £100.(*m*)

(*g*) See § 125, note (*o*) *infra*.

(*h*) See Regulations, Appendix No. 4.

(*i*) 34 & 35 Vict. c. 110, s. 5; 36 & 37 Vict. c. 85, s. 4; 53 Vict. c. 9, s. 2(2) (*d*); 55 & 56 Vict. c. 37, s. 2; *supra* § 112. See § 125 *infra*.

(*k*) 36 & 37 Vict. c. 85, s. 4, § 528 *infra*.

(*l*) 43 & 44 Vict. c. 43, s. 6. See also § 259 *infra* and Appx. No. 5.

(*m*) *Ibid.*, ss. 6, 7.

The Master's Duty to Carry proper Colours.

The flag: its commercial significance.

§ 115. The flag is the most obvious badge of the national character of the ship. By the law of nations she is liable to be considered as belonging to the nation under whose colours and pass (*n*) she is sailing. She is not permitted, in case any inconvenience should arise, to aver against the flag and pass to which she has attached herself, or to claim the benefit of her real character.(*o*) A ship warranted in her policy of insurance to be neutral must bear no other flag than that of a nation that was neutral at the commencement of the risk; and a ship warranted of any given national character must bear the flag of the nation to which the warranty relates, and no other.(*p*) Some countries have gone so far as to make the flag and pass of the ship conclusive on the cargo also, but this country has never carried the law to that extent.(*q*) Enough has now been said to show the commercial importance of the duty to carry proper colours. Their definition, and the penalties for failure to carry them, are the subject of statutory enactment.

Proper colours.

§ 116. The proper national colours for all ships and boats belonging to subjects of the Queen, and not under the command of a naval officer on full pay, unless other colours are permitted under a warrant from the Queen or the Admiralty, are "the red ensign usually worn by merchant ships, without any defacement or modification whatever."(*r*)

Penalty for not showing colours.

Ships belonging to any of the Queen's subjects, other than fishing boats duly registered, lettered and marked, are required, on signal from any vessel under command of a naval officer on full pay, and on entering or leaving a foreign or, if not less than 50 tons gross tonnage, a British port, to hoist the proper national colours. Non-compliance with this requirement renders the master liable to a maximum penalty of £100.(*s*)

Penalty for carrying improper colours.

If any colours usually worn by H.M. ships, or resembling those of Her Majesty, or any distinctive national colours except the red ensign and the Union Jack with a white border, or the pendant usually carried by H.M. ships or any pendant resembling it, are or is hoisted without warrant on any ship or boat belonging to a subject of the Queen, the master, or owner if on board, and every person hoisting or assisting in hoisting the same, is liable to a penalty not exceeding £500. And any officer on full pay in the Army or Navy, or officer of Customs or Consular officer

(*n*) The "pass" is one of the ship's documents referred to below, § 129.

(*o*) Per Sir W. Scott, *The Success*, 1 Dods. 132; *The Vrow Elizabeth*, 5 C. Rob. 4; Phillips, Ins. 804.

(*p*) Phillips, Ins. 804; see § 135 *infra*.

(*q*) *The Vreede Scholtys*, 5 C. Rob. 5, note to *The Vrow Elizabeth*.

(*r*) 52 & 53 Vict. c. 73, ss. 1, 4.

(*s*) *Ibid.*, ss. 2, 4.

may go on board and take away such colours or pendant, which will be forfeited to the Queen.(*t*)

What Documents the Master must procure and keep.

All documents for protection of ship and cargo.

§ 117. The master is the proper person to have the custody of the ship's papers. He should procure and keep on board all papers and documents for the manifestation and protection of the ship and cargo, in accordance with the law of the countries from and to which he is bound, and in accordance with the law of nations and the existing treaties between particular States. He must be careful to take on board no false or colourable papers, that might subject the ship to capture or detention by the Government of his own or any foreign country, or whereby the policies of insurance may be rendered void.(*u*)

No false or colourable papers.

Penalty

§ 118. An attempt by the master to conceal(*x*) the national character of a British ship from a person entitled to inquire into it renders her liable to forfeiture,(*y*) and her master to fine and imprisonment, under the following enactment :—

for concealment of British or assumption of foreign character.

> If the master or owner of any British ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to her Majesty; and the master, if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanour.(*z*)

§ 119. From the following enactment it will be seen that in certain cases the master also renders himself liable to a penalty if he fails to produce his ship-documents when required to do so.

Officers of Board of Trade, Naval

Every officer of the Board of Trade, and every commissioned officer of any of her Majesty's ships on full pay, and every British consular

(*t*) 17 & 18 Vict. c. 104, s. 105. As to the mode of prosecuting the offence and recovering the penalty, see 52 & 53 Vict. c. 73, s. 3; cp. *The Minerva*, 3 C. Rob. 34; *R.* v. *Miller*, 1 Hagg. 197; *R.* v. *Benson*, 3 Hagg. 96, cases before the present enactment.

(*u*) Abbott, 13th ed. 395; *Horneyer* v. *Lushington*, 15 East, 46; *Oswell* v. *Vigne*, *ibid.* 70. "The papers alone are not a breach of neutrality, so as to work a forfeiture of the ship; they are only evidence, from which a cause of forfeiture may be inferred. They may be evidence, either of enemy's property, or of destination to a blockaded port, or to an enemy's port with contraband, and so be evidence, on which the judge may find a cause of forfeiture proved, but they are in themselves no cause of forfeiture." Per Erle, C.J., *Hobbs* v. *Henning*, 17 C. B. N. S. 791, 821.

(*x*) As by representing that she has been sold to a foreigner: *The Sceptre*, 35 L. T. 429; *The Annandale*, 2 P. D. 179, 218.

(*y*) The forfeiture takes effect immediately on the commission of the offence, and prevails against a subsequent *bonâ fide* purchaser without notice. *The Annandale*, *ubi sup.*

(*z*) 17 & 18 Vict. c. 104, s. 103; and see § 52 *infra*.

officers, consuls, the registrar-general of seamen, officers of Customs and shipping masters, may inspect documents and muster crews.

officer, and the Registrar-General of Seamen and his assistant, and every chief officer of Customs in any place in her Majesty's dominions, and every [superintendent of a mercantile marine office] (*a*) may, in cases where he has reason to suspect that the provisions of this Act or the laws for the time being relating to merchant seamen and to navigation, are not complied with, exercise the following powers; (that is to say,)

He may require the owner, master, or any of the crew of any British ship to produce any official log books or other documents relating to such crew or any member thereof in their respective possession or control:

He may require any such master to produce a list of all persons on board his ship, and take copies of such official log books, or documents, or of any part thereof:

He may muster the crew of any such ship:

He may summon the master to appear and give any explanation concerning such ship or her crew or the said official log books or documents:

Penalty.

And if upon requisition duly made by any person so authorised in that behalf as aforesaid, any person refuses or neglects to produce any such official log book or document as he is hereinbefore required to produce, or to allow the same to be inspected or copied, as aforesaid, or impedes any such muster of a crew as aforesaid, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorised to demand any such explanation, he shall for each such offence incur a penalty not exceeding twenty pounds.(*b*)

Effect of false papers on insurance.

§ 120. The underwriters are not liable for a loss of ship, consequent upon a neutral vessel's taking false papers,(*c*) unless liberty to do so is expressly reserved in the policy.(*d*) Indeed, according to analogy and the weight of authority, there is an implied stipulation on the part of the assured, by the fact of affecting the policy, that the ship or goods insured are accompanied by documents and other insignia truly indicating their national character.(*e*)

What documents master must keep.

§ 121. The documents which the master should procure and keep on board are the following:—

1. THE CERTIFICATE OF REGISTRY,(*f*) and the memorandum of tonnage of any space not included in the ship's registered tonnage, and in which deck cargo is carried.(*g*)

2. THE AGREEMENT WITH THE SEAMEN, and indentures or assignments of apprenticeships.(*h*)

(*a*) 25 & 26 Vict. c. 63, s. 15.

(*b*) 17 & 18 Vict. c. 104, s. 13; see also as to production of ship's documents, *ibid.*, s. 19; 34 & 35 Vict. c. 110, s. 5; 39 & 40 Vict. c. 80, s. 23; *infra* §§ 122, 131—133.

(*c*) Phillips on Ins. 744; *Horneyer* v. *Lushington*, 15 East, 46; *Oswell* v. *Vigne*, *ibid.*, 70; *Formin* v. *Oswell*, 3 Camp. 356.

(*d*) *Bell* v. *Bromfield* 15 East, 364.

(*e*) Phillips, 745; per Lord Kenyon, C.J., and Grose, J. *Christie* v. *Secretan*, 8 T. R. pp. 196, 197; *Bell* v. *Carstairs*, 14 East, 374; *Le Cheminant* v. *Allnutt*, 4 Taunt. 367, 379; *Steel* v. *Lacy*, 3 Taunt. 285. Cp., however, *Price* v. *Bell*, 1 East, 663; *Dawson* v. *Atty*, 7 East, 367.

(*f*) See 17 & 18 Vict. c. 104, ss. 44—54; § 122 *infra*.

(*g*) 39 & 40 Vict. c. 80, s. 23; *infra* § 252, and see § 122.

(*h*) 17 & 18 Vict. c. 104, ss. 149–167:

3. THE CHARTER-PARTY.
4. THE BILLS OF LADING (*i*) AND INVOICES.
5. THE LOG BOOK.(*k*)
6. A BILL OF HEALTH.(*l*)
7. In time of War, THE PASSPORT, SEA BRIEF, SEA LETTER, OR PASS.(*m*)

8. The master is also required to make out and sign for delivery to the superintendent at his final port of destination, a list containing certain particulars respecting his ship, her voyage and crew ;(*n*) and to keep a book wherein to enter any deductions to be made from any seaman's wages ;(*o*) and he must be careful to obtain the various certificates and receipts referred to below,(*p*) production of which is necessary before a clearance or transire can be obtained.

Of the above documents it will be convenient here to refer to those numbered 1, 5, 6, 7 ; and the others will require attention below in connexion with the subjects to which they respectively relate.

The Certificate of Registry.

The certificate of registry.

§ 122. The master's duties with reference to the certificate of registry are :—(1) To see that his name is comprised therein, or, if he has been substituted for another master, that a memorandum of the change is indorsed thereon, otherwise he may be refused at any port in the Queen's dominions admission to act there as master of his ship.(*q*) (2) To produce the certificate to the officer of Customs whose duty it is to grant a clearance or transire ;(*r*) and also, it seems, to produce the certificate as well as the memorandum of deck tonnage above mentioned when tonnage dues are demanded.(*s*) (3) In case of the loss or destruction of the certificate in the United Kingdom, or in the British Possession where the ship is registered, to obtain a new certificate, and in case of such loss or destruction elsewhere, to make a declaration at the first port having a British registrar, at which the ship is after such loss or destruction, and obtain a provisional certificate,(*t*) and to deliver the same up within ten days after her first subsequent arrival at her port of discharge in the United Kingdom, or in the British Possession where she is

as to fishing boats, see 46 & 47 Vict. c. 41, ss. 13–23, 55 ; *infra* §§ 474, *et seq.*

(*i*) See Chap. VI. *infra.*

(*k*) 17 & 18 Vict. c. 104, ss. 280, 285–287 ; (fishing boats) 46 & 47 Vict. c. 41, s. 55 ; *infra* §§ 123–127.

(*l*) *Infra* § 128.

(*m*) *Infra* § 129.

(*n*) 17 & 18 Vict. c. 104, ss. 271–276.

(*o*) *Ibid.*, s. 171 ; *infra* § 487.

(*p*) See §§ 131–133 *infra.*

(*q*) 17 & 18 Vict. c. 104, ss. 44, 46.

(*r*) *Ibid.*, s. 19.

(*s*) 39 & 40 Vict. c. 80, s. 23.

(*t*) 17 & 18 Vict. c. 104, s. 48 ; and see s. 51.

registered, as the case may be, and obtain a new certificate. A penalty not exceeding £50 is imposed for failure to deliver up a provisional certificate within the above period.(*u*) (4) To deliver up the certificate to any registrar, officer of customs, or other person lawfully entitled to require such delivery, and upon ceasing to command the ship, to the person entitled to the custody of the certificate for the purposes of the lawful navigation of the ship. Refusal, without reasonable cause to deliver up the certificate to any of the above persons, renders the offenders liable to a penalty not exceeding £100.(*x*) (5) In case of the loss of his ship in port, then immediately, and in case of her loss elsewhere, then within ten days after his arrival in port, to deliver up the certificate to the registrar, or to the British Consular officer at the port, under a like penalty for default.(*y*) (6) In case of his ship becoming at a foreign port the property of persons qualified to be owners of British ships, to obtain a provisional certificate.(*yy*)

Consequences of failure to produce,

No clearance or transire may be granted until after production of the certificate, and any ship attempting to go to sea as a British ship without such clearance or transire, may be detained until production of the certificate.(*z*)

and using false certificate.

Any master or owner who uses, or attempts to use for the navigation of his ship, a certificate not legally granted in respect of her, is guilty of a misdemeanour, and renders his ship liable to seizure and forfeiture.(*a*)

The Log Book: Official Log.

Official log.

§ 123. An official log for every ship must be kept in the appropriate form sanctioned by the Board of Trade for the class of ships to which she belongs, each form containing blanks for the statutory entries required by the Act. It may, at the discretion of the owner or master, be kept either distinct from the ship's ordinary log, or united therewith; but in all cases all the blanks in the official log *must* be duly and properly filled up.(*b*)

(*u*) 17 & 18 Vict. c. 104, s. 49.

(*x*) *Ibid.*, s. 50; cp. s. 279, *infra* § 225. Where a ship's husband, and owner of the majority of shares, required from the master, who was also a part owner, delivery of the certificate, without giving any reason, or intimating an intention to appoint another master, and before the ship had finished discharging, it was held that the master had reasonable cause for refusing to deliver it up, and could not be convicted under this section. *Harkle (or Arkle)* v. *Henzell*, 8 E. & B. 328. But a master who is wrongfully dismissed is not entitled to retain the certificate of registry, and the Admiralty Court will order him to deliver it up.

(*y*) *Ibid.*, s. 53. *The St. Olaf*, 35 L. T. 428; 3 Asp. 268; cp. *Gibson v. Ingo*, 6 Hare, 112.

(*yy*) See *ibid.*, s. 54.

(*z*) 17 & 18 Vict. c. 104, s. 19.

(*a*) *Ibid.*, s. 52.

(*b*) *Ibid.*, s. 280; (fishing boats) 46 & 47 Vict. c. 41, s. 55.

If the master keeps an ordinary log of the daily occurrences and routine separate from the official log, it is his duty to make those entries correctly. These logs, when correctly kept, or when regularly entered up by the mate from the log slate, often enable important evidence to be given in disputed questions with freighters and underwriters, which, without the assistance of the entries, would be either forgotten or incredible.(*c*) Thus, if a justifiable deviation from the ordinary course of the voyage is necessarily made,(*d*) the master ought to enter in the log, either at the time, or as soon afterwards as circumstances permit, a statement of the causes which rendered that deviation necessary, and of the circumstances attending it, and have the entry signed by the officer and some of the crew, so as to enable each person signing it to refresh his memory afterwards, if the necessity arises, as to the exact circumstances which existed at the time when such deviation was determined on. In many cases, the mere fact that daily occurrences are not duly and regularly entered is sufficient to raise in subsequent judicial inquiries, injurious doubts respecting the conduct of the master.

Ordinary log.

Value of log entries.

§ 124. The statutory requirements as to entries to be made by the master in the official log are as follows :(*e*)—

By the Merchant Shipping Act, 1854.(*f*)—

244. Upon the commission of any of the offences enumerated in the [243rd] section (*g*) an entry thereof shall be made in the official log book, and shall be signed by the master and also by the mate or one of the crew; and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit ; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid ; and in any subsequent legal proceeding the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof the court hearing the case may, at its discretion, refuse to receive evidence of the offence.

Entry of offences to be made in official log, and to be read over or a copy given to the offender, and his reply, if any, to be also entered

281. Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as the occurrence to which it relates, shall be made and

Entries to be made in due time.

(*c*) It is usual in steamships for the engineer to keep a log, which for the same reason should be accurately kept. In collision actions the entries in such a log are admissible in evidence against the owner. *The Earl of Dumfries*, 10 P. D. 31.

(*d*) *Infra* §§ 208-215.

(*e*) As to the entry of space occupied by deck cargo by the officer of the Board of Trade or Customs who ascertains it, see 39 & 40 Vict. c. 80, s. 23, § 252 *infra*.

(*f*) 17 & 18 Vict. c. 104.

(*g*) See § 508 *infra*. The offences are desertion, disobedience, and kindred offences, wilful damage, embezzlement of stores, smuggling. See also s. 249, as to the production of entries of desertion; *infra* § 489, note (*g*).

dated so as to show the date of the occurrence and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge be made more than twenty-four hours after such arrival.

Entries required in official log.

282. Every master of a ship for which an official log book is hereby required shall make or cause to be made therein entries of the following matters; (that is to say,)

Convictions.

(1) Every legal conviction of any member of his crew, and the punishment inflicted:

Offences.

(2) Every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry, and concerning the reply (if any) made to the charge, as hereinbefore required: (*h*)

Punishments.

(3) Every offence for which punishment is inflicted on board, and the punishment inflicted: (*h*)

Conduct, &c., of crew.

(4) A statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars:

Illness and injuries.

(5) Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted (if any):

Marriages.

(8) (*i*) Every marriage taking place on board, with the names and ages of the parties:

Quitting ship.

(9) The name of every seamen or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner, and cause thereof:

Wages of men entering navy.

(10) The amount of wages due to any seaman who enters her Majesty's service during the voyage:

Wages of deceased seamen.

(11) The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom:

Sale of deceased men's effects.

(12) The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and of the sum received for it:

Collisions.

(13) Every collision with any other ship, and the circumstances under which the same occurred. (*j*)

Order of Naval Courts.

By s. 264, as we have already seen, (*k*) orders of Naval Courts must, where practicable, be entered in the official log of the ship to which the parties belong, and countersigned by the president of the Court.

Deck and load-lines.

§ 125. By s. 26, sub-s. (6) of the Merchant Shipping Act, 1876, (*l*) the master is to enter in the official log book a copy of the statement required by that section of the distance between the centre of the load-line disc and upper edge of each deck-line of his ship. And by s. 5 of the Merchant Shipping Act, 1871 (*m*)—

(*h*) See s. 244 of the Act and note (*g*) *supra*; and as to offences, &c., Ch. XI. *infra*.

(*i*) Sub-sects. 6 & 7 are repealed by 37 & 38 Vict. c. 88, s. 55. S. 37 of that Act contains substituted provisions, *infra* § 126.

(*j*) The penalty for omission to make immediate entry in this case is £20; see s. 328 of the Act; *infra* § 686.

(*k*) *Supra* § 13.

(*l*) 39 & 40 Vict. c. 80; *supra* § 111.

(*m*) 34 & 35 Vict. c. 110. See also § 113 *supra*, and § 528 *infra*, where the remainder of this section is set out.

The master of every British seagoing ship shall, upon her leaving any dock, wharf, port, or harbour for the purpose of proceeding to sea, record her draught of water in the official log book (if any), and shall produce such record to any principal officer of customs whenever required by him so to do, or in default of such production shall incur a penalty not exceeding twenty pounds. Draughts of water.

And by s. 4 of the Merchant Shipping Act, 1873(*n*)— Clearside.

The record of the draught of water of any seagoing ship required under s. 5 of the Merchant Shipping Act, 1871, shall, in addition to the particulars thereby required, specify the extent of her clearside in feet and inches.

The term "clearside" means the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the register is measured, and the measurement of the clearside is to be taken at the lowest part of the side.

And by the Merchant Shipping Act, 1890, s. 2 (2*d*), the Board of Trade may, as we have seen, make regulations requiring the entry, under a penalty not exceeding £100 for default, of certificates approving the position or any alteration of the load-line disc, and other particulars as to draught of water and freeboard, in the official log, or other publication thereof.(*o*) Particulars under load-line Act.

§ 126. By the Births and Deaths Registration Act, 1874,(*p*) the master or other person in charge of a British ship or of any ship carrying passengers to or from any port of the United Kingdom as its port of destination or departure is required, as soon as may be after the occurrence of a birth or death on board, to "record in his log book or otherwise the fact of such birth or death and the particulars required,(*q*) to be registered concerning such birth or death, or such of them as may be known to him," and must, except in the case of a Queen's ship, on arrival of his ship in the United Kingdom, or at such other time or place as the Board of Trade directs, deliver or send in form and manner directed by the Board, a return of the facts Births and deaths.

(*n*) 36 & 37 Vict. c. 85. It may be doubted whether the provisions of this section do in fact require the clearside to be entered in the log, or whether they do not relate exclusively to the record to be kept by Board of Trade officials. See § 528 *infra*, where the residue of this section is set out.

(*o*) 53 Vict. c. 9, amended by 55 & 56 Vict. c. 37, s. 2; *supra* § 112. "Freeboard" appears to mean the distance between the centre of the disc and the line from which the freeboard is measured. It seems that the position of this line may differ from that of the deck-line, in which case the "freeboard" would be something different from the "clear side" as defined above. See s. 1 of this Act, and 39 & 40 Vict. c. 80, s. 26 (3); *supra* § 111.

(*p*) 37 & 38 Vict. c. 88, s. 37, sub-s. (1), (2), (8). By sub-s. (3), when the return is to be delivered out of the United Kingdom, the Board may direct it to be delivered to the shipping master or collector of customs, or, at a foreign port to the British consul.

(*q*) See Schedule to the Act. The particulars are,—in case of birth: date of birth, name (if any) and sex; name, surname, and rank, profession or occupation of father; name, surname, and maiden surname of mother; nationality and last place of abode of father and mother. In case of death: date of death; name and surname; sex, age, rank, profession or occupation; nationality and last place of abode; cause of death.

recorded to the registrar general of shipping and seamen. The maximum penalty for noncompliance with this section is £5 for each offence.

§ 127. The Merchant Shipping Act, 1854,(r) further provides as follows:—

Entries, how to be signed.

283. The entries hereby required to be made in official log books shall be signed as follows; that is to say, every such entry shall be signed by the master and by the mate or some other of the crew, and every entry of illness, injury, or death shall be also signed by the surgeon or medical practitioner on board (if any); and every entry of wages due to or of the sale of the effects of any seaman or apprentice who dies shall be signed by the master and by the mate and some other member of the crew; and every entry of wages due to any seaman who enters her Majesty's service shall be signed by the master, and by the seaman or by the officer authorized to receive the seaman into such service.

Penalties in respect of official logs.

284. The following offences in respect to official log books shall be punishable as hereinafter mentioned; (that is to say,)

(1) If in any case an official log book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log book is not made at the time and in the manner hereby directed, the master shall for each such offence incur the specific penalty herein mentioned in respect thereof, or where there is no such specific penalty, a penalty not exceeding five pounds:

(2) Every person who makes or procures to be made or assists in making any entry in any official log book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival, shall for each such offence incur a penalty not exceeding thirty pounds:

(3) Every person who wilfully destroys or mutilates or renders illegible any entry in any official log book, or who wilfully makes or procures to be made or assists in making any false or fraudulent entry or omission in any such log book, shall for each such offence be deemed guilty of a misdemeanour.

Entries in official logs to be received in evidence.

285. All entries made in any official log book as hereinbefore directed shall be received in evidence in any proceeding in any court of justice, subject to all just exceptions.

Official logs to be delivered to superintendent.

286. In the case of foreign-going ships the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the [superintendent] (s) before whom the crew is discharged the official log book of the voyage; and the master or owner of every home-trade ship,(t) not exclusively employed in trading between ports on the coasts in the United Kingdom, shall within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year transmit or deliver to some [superintendent of a mercantile marine office] (s) in the United Kingdom the official log book for the preceding half year; and every master or owner who refuses or neglects to deliver his official log book as hereby required shall be subject to the same consequences and liabilities to

(r) 17 & 18 Vict. c. 104.
(s) 25 & 26 Vict. c. 63, s. 15.
(t) See definition of "home-trade" and "foreign-going ships," *supra* § 25, note (p).

which he is hereby made subject for the non-delivery of the list of his crew hereinbefore mentioned.(u)

Official logs to be sent home in case of transfer of ship, and in case of loss.

287. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or of a home-trade ship,(x) the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the [Mercantile Marine Office superintendent] (y) at the port to which the ship belonged the official log book (if any) duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and in default shall for each offence incur a penalty not exceeding ten pounds; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable and as soon as possible, deliver or transmit to the [superintendent] (y) at the port to which the ship belonged the official log book (if any) duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding ten pounds.(z)

The Bill of Health, Passport, &c.

Bill of health.

§ 128. The bill of health is a document given to the master by the consul of the port from which he comes, describing the sanitary state of the place. It may be a clean, suspected, or foul bill. The first is given where no disease of an infectious or contagious kind is known to exist; the second, when, though no such disease has appeared, there is reason to fear it; and the last is given when such a disease actually exists at the time of the ship's departure. The latter subjects the ship to the full period of quarantine.(a)

When required.

A bill of health is only required when the laws of the country to which the ship is about to sail require such a bill to be produced before the ship is admitted into port, and where, in default of one being produced, they subject the ship to quarantine or delay. It is in such case one of the documents which are necessary to enable the ship to perform her voyage with reasonable expedition.(b)

The passport, sea-brief, sea-letter, or pass.

Warranty of neutrality.

§ 129. During maritime war, it is important for underwriters to ascertain whether the ship or goods insured are liable to capture; and to avoid this risk it is customary, where it is proposed to insure as neutral, for the underwriters to require a warranty that the ship or goods are neutral or neutral property. This is an engagement on the part of the assured, that the ship or goods are owned by persons resident in a country at peace when the risk begins, and who have the commercial character of subjects of such country.(c) In order to be neutral within the meaning

(u) A maximum penalty of £5 and disqualification from "clearing inwards." See 17 & 18 Vict. c. 104, ss. 274, 275; *infra* § 225.

(x) See note (t) *supra*.

(y) 25 & 26 Vict. c. 63, s. 15.

(z) A like penalty is imposed for non-delivery under like circumstances of the list of the crew, 17 & 18 Vict. c. 104, s. 276 (*infra* §·225).

(a) Maude and P., 4th ed. 143.

(b) See *Levy* v. *Costerton*, 4 Camp. 388.

(c) Phillips on Ins. 783: see further as to warranties, § 135 *infra*.

of this warranty, so as to be protected against hostile capture, the ship must be furnished with all those documents and proofs of the neutral property of herself and her cargo, required to be on board either by the law of nations or by the regulations of international treaties.(*d*) We have already seen the importance of the flag in this connexion.(*dd*)

Passport, sea-brief, or sea-letter.

In addition to the flag, it is usual in time of maritime war to carry, and the master should take care to procure, besides the documents already enumerated, a passport, sea-brief, sea-letter, or pass.

The document, which is thus variously described, is a certificate granted directly, or indirectly, by the supreme authority of a nation, declaring that the ship sails under the protection of such nation, and expressly or impliedly giving notice to all people that she is to be so regarded. The national character of the ship is therefore explicitly avowed by the sea-letter, and it is not permitted to disown the character thus formally assumed.(*e*)

On change of masters, documents hereby required to be handed over to successor.

§ 130. If during the progress of a voyage the master is superseded or for any other reason quits the ship, and is succeeded in the command by some other person, he must deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, under a penalty not exceeding one hundred pounds for default; and such successor is required, immediately on assuming command, to enter in the official log a list of the documents so delivered to him.(*f*)

The Master's Duty to obtain the necessary Clearances, &c.

To obtain clearances and pay port dues.

§ 131. All things being prepared for the commencement of the voyage, the master must proceed to obtain the necessary clearance, or permission to sail, from the officer of the Customs, or the other authorities appointed for the discharge of vessels; and must pay the necessary port and other charges for that purpose, and for these he is personally responsible.(*g*)

National character of ship to be declared before clearance.

By the Merchant Shipping Act, 1854, s. 102,(*h*) no clearance or transire may be granted for any ship until her master has declared to the officer of Customs the name of the nation to which he claims that she belongs, who is thereupon required to inscribe such name on the clearance or transire; and if any ship attempts to proceed to sea without a clearance or transire, any such officer may detain her until such declaration is made.

(*d*) Arnould on Ins. § 231.
(*dd*) *Supra* §§ 115, 116.
(*e*) Phillips on Ins., 805; *The Vigilantia*, 1 C. Rob. at p. 13; *The Vreede Scholtys*, 5 C. Rob. 5 n.
(*f*) 17 & 18 Vict. c. 104, s. 259; cp. s. 50, *supra* § 122.
(*g*) Abbott, 13th ed., 396; *infra* § 226.
(*h*) 17 & 18 Vict. c. 104.

And by s. 19 (3), as we have already seen,(*i*) no officer of Customs shall grant a clearance or transire to any ship required to be registered for the purpose of enabling her to proceed to sea as a British ship, unless her master, upon being required so to do, produces to him her certificate of registry; and if she attempts to proceed to sea as a British ship without a clearance or transire, such officer may detain her until such certificate is produced to him.

Production of certificate of registry.

We have also seen (*j*) that ships, in respect of which notice has been duly given that they are not properly provided with life-saving appliances, or with lights and the means of making fog signals, will not be cleared outwards, or obtain a transire, or be allowed to proceed to sea, without a certificate that they ares o provided. The supply of proper medicines is similarly enforced.(*k*)

Of certificates of life-saving appliances, lights, &c., in certain cases.

By 17 & 18 Vict. c. 104, s. 400, "No officer of Customs at any port where light dues are payable in respect of any ship shall grant a clearance or transire for any such ship, unless the receipt for the same is produced to him." A like power to withhold a clearance until production of a certificate of payment of tonnage rates is conferred by the Harbours, &c., Clauses Act, 1847.(*l*)

Of receipts for light dues and tonnage rates.

§ 132. Further, no clearance or transire will be granted without the production of a certificate (to be obtained from the superintendent of a mercantile marine office) that the requirements of the Merchant Shipping Act with respect to the agreement with the seamen, and its production, and in the case of foreign-going ships and home-trade passenger ships, with respect to the production of the requisite certificates of competency or service, have been complied with. If any foreign-going ship attempts to go to sea without a clearance, or any home-trade ship attempts to ply or go to sea without a clearance or transire, any officer of Customs may detain her until such certificate is produced.(*m*)

Of certificates that requirements as to agreements and certificates of competency have been complied with.

§ 133. Where it is intended to carry passengers the special provisions which have been enacted for their protection and safety must be complied with before the ship may proceed to sea. These will be stated at length hereafter.(*n*) It is enough to mention here that no officer of Customs may grant any clearance or transire for a passenger steamer unless upon production of a certificate then in force, and applicable to her intended voyage, that the provisions of the law with respect to the survey of the ship, and the transmission of declarations in respect thereof, have

Of Board of Trade certificates for passenger steamers.

(*i*) *Supra* § 122.

(*j*) *Supra* § 109; 51 & 52 Vict. c. 24, s. 5; 25 & 26 Vict. c. 63, s. 30.

(*k*) 17 & 18 Vict. c. 104, s. 226; *infra* § 525.

(*l*) 10 & 11 Vict. c. 27, s. 48; *infra* § 227.

(*m*) 17 & 18 Vict. c. 104, ss. 161, 162, *infra* § 478; as to certificates of competency and service, see *supra* §§ 27, 29, 32.

(*n*) *Infra*, Chap. XIII.

been complied with; and that if any passenger steamer attempts to ply or go to sea without such production, any such officer may detain her until such certificate is produced;(*o*) and further, that no "passenger ship" may clear out or proceed to sea without a certificate of clearance from the emigration officer, or in case of an appeal, the Court of Survey,(*p*) that the requirements of the Passengers Acts (*q*) have been complied with, and that she is seaworthy, in safe trim and in all respects fit for her intended voyage, and that her passengers and crew are fit to proceed, nor until the master has joined in the requisite bond to the Crown.(*r*) A passenger ship which clears out or proceeds to sea without her master having obtained such certificate of clearance, or without his having joined in the bond, is liable to forfeiture.(*s*)

Of certificates of clearance for passenger ships.

§ 134. The numerous provisions of the Customs Acts, so far as they relate to the functions of the master in clearing his ship inwards and outwards, and prescribe his duties to the authorities of the Customs, will be found set out below.(*t*)

(*o*) 17 & 18 Vict. c. 104, s. 318 (as amended by 39 & 40 Vict. c. 80, s. 5). The certificate is granted by the Board of Trade under s. 312. Colonial certificates may, by Order in Council, be made of the same force as Board of Trade certificates: 39 & 40 Vict. c. 80, s. 17; and the Board of Trade may in certain cases grant certificates to foreign passenger steamers without their being surveyed in this country: *ibid.*, s. 19.

(*p*) 39 & 40 Vict. c. 80, s. 14.

(*q*) 18 & 19 Vict. c. 119; 26 & 27 Vict. c. 51; *infra*, Chap. XIII.

(*r*) 18 & 19 Vict. c. 119, s. 11; and see s. 50.

(*s*) 26 & 27 Vict. c. 51, s. 13.

(*t*) *Infra*, Chap. XVII.

CHAPTER IV.

THE VOYAGE.

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When the Master should set Sail on the Voyage: His Duty to comply with the Warranty in the Policy.

Duty to comply with warranties in policy.

§ 135. The master must strictly comply with all warranties contained in the policy of insurance. Non-compliance with a warranty, relating either to the actual state, position, or circumstances of the vessel, or to something that is to be subsequently

done with her, avoids the policy.(*a*) According to English law it seems that breach of a warranty of the latter kind avoids the policy *ab initio*, so as to prevent the assured from recovering for a loss prior to the breach;(*b*) but it appears to be otherwise in the United States.(*c*)

Warranty "to sail."

In policies of insurance one of the most general of all the express warranties is that which alleges that the ship has sailed, or which stipulates that she shall sail on, before, or after some certain day mentioned in the policy.(*d*)

In considering, therefore, when the ship should set sail, the master should carefully comply with the terms, not only of the charter-party,(*e*) but also of the policies of insurance, since if he does not sail according to the warranty contained in the policy he will forfeit the policy and discharge the underwriter from his liabilities thereunder, and render himself liable for such neglect of duty.(*f*) And in the absence of a warranty, if the policy is "at and from" a port, any unreasonable delay between the time when the policy attaches "at" the port, and the time when the ship sails on her voyage, amounts, as we shall see, to a deviation and discharges the underwriter. In such a case, so long as she is *bonâ fide* preparing for her voyage, by repairs or the like, the delay is excused, and the underwriter continues liable.(*g*)

Consequences of not sailing according to the warranty.

Where no warranty, duty not to delay unreasonably.

Meaning of warranty "to sail."

§ 136. In all cases a warranty in a policy of insurance "to sail," means "to sail on the voyage insured," before the day limited, with the intention of at once prosecuting it, and in a state of perfect fitness and preparation for completing it, unless the voyage insured be such as to require a different complement of men or state of equipment in different parts of it. Under a warranty "to sail," not being a warranty "to sail from" a particular point of departure, if the ship has been unmoored and has got under way, in complete preparation for the voyage, with the purpose of proceeding to sea, without further delay at the port of departure, on or before the day limited in the warranty, then although she may have gone ever so short a distance, and although she may have afterwards put back from stress of weather, or from apprehension of an enemy in sight, or although she may have been stopped by an embargo, or have been in any way involuntarily detained, yet, as there was a beginning to sail on the voyage insured on or before the day named, the warranty is held to have been complied with.(*h*)

What is a compliance with such warranty:

generally.

(*a*) Arnould, § 224; as to the warranty of neutrality, see § 115 *sup.*; as to warranty to sail with convoy, §§ 171–174 *infra.*

(*b*) Arnould, § 224.

(*c*) Phillips, 771.

(*d*) Arnould, § 227.

(*e*) See §§ 148 *et seq. infra.*

(*f*) Arnould, § 224.

(*g*) *Infra* §§ 179–183.

(*h*) Arnould, § 228; per Lord Tenterden, C.J., *Pittegrew* v. *Pringle*, 3 B. & Ad. 514, 520; *Bond* v. *Nutt*, 2 Cowp. 601, 607; *Cochrane* v. *Fisher*, 2 Cr. & M.

If, on the other hand, the ship is not in a state of complete preparation for her sea voyage at the time when she quits her moorings and sets sail, and is not *bonâ fide* intended to proceed directly and immediately upon it, this is not a compliance with the warranty.(*i*)

On voyage requiring different equipment at different stages.

But if the voyage be such as to require a different complement of men or a different state of equipment, in different parts of it—as if it were a voyage down a canal or river, and thence to and on the open sea—it is a sufficient compliance with the warranty to sail on the day named, if the ship sail on or before the day, in a state commensurate with her risk for that stage of her voyage, although not then in a state adequate to a different risk at a later stage of the voyage.(*k*)

Where ship prevented from sailing by extraordinary peril.

§ 137. If a ship, warranted to sail on or before a day named, and completely ready to sail on that day, is prevented from so doing by stress of weather, or other extraordinary inevitable peril or restraint, not excepted in the policy, and afterwards sails without unnecessary delay, the question whether the warranty is complied with is not free from difficulty, and one upon which, it is said, the decisions are not in harmony.(*l*) It has been held in one case that under such circumstances the warranty is not complied with.(*m*) And it is submitted that the ground of decision in each of the cases which may appear to conflict with it, was that the ship had in point of fact sailed, according to the definition given above,(*n*) before the time for doing so had elapsed.(*o*)

It is said, however, by a very high authority, that the proposition which seems to come nearest to reconciling the decisions of the Courts is the following:

"If the risk has previously commenced under the policy, and the vessel is wholly ready to depart by the time warranted, so far as the fitting out, loading, manning, and clearing out, and all other preparations and preliminaries to the actual departure depending upon the assured, are fully completed, and nothing hinders her sailing but some peril insured against by the policy, or which if it had occurred at any subsequent stage of the voyage would not have discharged the underwriter, the warranty

581; 1 C. M. & R. 809; per Sir J. Hannen, *The Rona*, 51 L. T. at p. 30.

(*i*) Arnould, § 228.

(*k*) *Bouillon* v. *Lupton*, 15 C. B. N. S. 113, *infra* § 138; cp. *Biccard v. Shepherd*, 14 Moo. P. C. 471, *sup.* § 98; and distinguish *Ridsdale* v. *Newnham*, 3 M. & S. 456, *infra* § 138.

(*l*) Phillips on Ins. 773.

(*m*) *Nelson* v. *Salvador*, M. & M. 309, *infra* § 138; and see *Pittegrew* v. *Pringle*, 3 B. & Ad. 514.

(*n*) *Supra* § 136.

(*o*) *Lang* v. *Anderdon*, 2 B. & C. 495; *Bond* v. *Nutt*, Cowp. 601; *Earle* v. *Harris*, Doug. 357; *Thelluson* v. *Fergusson*, Doug. 361; *Nelson* v. *Salvador*, M. & M. 309; *Cochrane* v. *Fisher*, 2 C. & M. 581; 1 C. M. & R. 809.

to sail is complied with, unless a different construction is expressly indicated by the policy.

"But if the risk is to commence only *at the sailing* of the ship, and the assured is responsible for and the underwriter free from all preceding risks, perils, and losses, then the warranty is not complied with, unless she actually sails within the time warranted."(*p*)

Cases as to meaning of warranty to sail.

§ 138. The meaning of the expressions in policies which relate to the time of sailing will be best explained by the following cases:—

"To sail on or before."

(1) The expression "*to sail on or before*" a certain day.

In *Wright* v. *Shiffner*,(*q*) the policy was, "at and from Surinam, and all or any of the West Indian Islands (except Jamaica), to London"; and the warranty was "*to sail on or before the* 1*st August*." The ship sailed from Surinam, her last port of loading, where she had cleared out, completely loaded and provisioned for the homeward voyage, before the day specified, and thence proceeded to Tortola, one of the West Indian Islands (which was not out of her usual course to England, and was the general rendezvous for convoy), in order to join convoy; and she finally sailed from Tortola with convoy *after* the 1st August. It was held that the ship had satisfied the warranty by sailing from Surinam, her last loading port, completely loaded and provisioned, before the 1st of August.

In *Ridsdale* v. *Newnham*,(*r*) a ship was insured "*at and from Portneuf to London*," with a warranty "*to sail on or before the* 28*th October*." On the 26th October, the ship, having completed her loading, dropped down the river St. Lawrence from Portneuf to Quebec (being the first place at which she could obtain her clearances), with a crew which, though sufficient for the river navigation, was not sufficient for her voyage across the Atlantic. She arrived at Quebec on the evening of the 28th, but did not complete her crew nor obtain her clearance at the Custom House there until the 29th, and she did not actually leave the port of Quebec till the 30th. It was held that the ship's dropping down from Portneuf without her sea complement of men was clearly not a beginning to sail on the voyage, but only a sailing preparatory to the voyage; that it was therefore not a compliance with the warranty, and that the underwriters were therefore discharged; and Lord Ellenborough said: "Warranted to sail on such a day" must mean to sail on her voyage; that is, when the ship could get her clearances and sail equipped for the voyage.

In *Bouillon* v. *Lupton*,(*s*) on the other hand, ships were insured

(*p*) Phillips on Ins. 773.
(*q*) 11 East, 515.
(*r*) 3 M. & S. 456. Cp. *Pittegrew* v. *Pringle*, 3 B. & Ad. 514.
(*s*) 15 C. B. N. S. 113.

"*at and from Lyons to Galatz*," and warranted "*to sail on or before the* 15*th of August*, 1861." They left Lyons on August 2nd, with a river crew and captain, and without masts or anchors, which it would have been impossible to carry on the river voyage. It was necessary to call at Marseilles in any case for sailing licences. The ships arrived at Arles on the 6th and at Marseilles on the 7th and 8th of August. Owing, in the first instance, to the necessity of complying with French law as to certificates of completeness and sailing licences, and afterwards to bad weather, they did not sail from Marseilles until the 23rd. They were properly equipped for each part of the voyage when they commenced it. It was held that, it being impossible for the vessels to perform the first part of the voyage in a state in which they would be seaworthy for the last, and a consequent necessity for dividing the voyage into two distinct parts, they had complied with the warranty to sail on the 15th of August, as well as the implied warranty of seaworthiness.

Cases as to meaning of warranty to sail.

In *Nelson* v. *Salvador*,(*t*) the insurance was "*at and from Tobago to London*," with a warranty "*to sail on or before the* 10*th August*." On the 9th August the ship took out her clearances for London on the voyage insured, and on the 10th had finally completed her loading and got her passengers on board. At this time she was moored in Tobago Bay with a bower anchor and a stream anchor, and there was no impediment to her sailing, had the wind permitted; in fact, on that day the stream anchor was raised, some of the sails were set, and the ship moved forward about thirty fathoms, by heaving in that extent of the cable of the bower anchor. It was, however, observed that a heavy swell was setting into the bay, so that, if the ship had departed that day, it was feared that she would be lost in getting out, and therefore the ship lay where she was till the 11th, when she got under weigh and finally left the port, having had no communication with the shore after the morning of the 10th. It was held that this was not a compliance with the warranty, as, in order to have complied with it, the ship must have been actually on her voyage on the day specified; that there was no such sailing, and that the underwriters were discharged.

§ 139. (2) The expressions "*to depart*," "*to sail from*," mean that the ship must be out of port and actually at sea, with all complete for the voyage, on or before the day mentioned.(*u*)

"To depart." "To sail from."

In *Lang* v. *Anderdon*,(*x*) a policy was effected on goods "by ship or ships" "*at and from Demerara to London*," with a warranty "*to sail from Demerara on or before the* 1*st August*, 1823."

(*t*) M. & M. 309; cp. and distinguish *Cochrane* v. *Fisher*, 2 C. & M. 581; 1 C. M. & R. 809, *infra* § 140.

(*u*) Phillips on Ins. 777.

(*x*) 3 B. & C. 495.

Cases as to meaning of warranty to sail: "To depart." "To sail from."

The ship was lying in the river of Demerara, opposite the town, that being the proper and usual place of loading and clearing out of ships of her tonnage. Having there completed her loading and obtained her clearance on the 1st of August, she dropped down the river to a place beyond its mouth, and there anchored, the tide being low. Large vessels only take in part of their cargo at the river anchorage, and do not complete their loading or obtain their clearances until they get outside a shoal commencing about three miles beyond the river's mouth. The ship on which the goods were laden was a small vessel. She did not get outside the shoal till the 3rd of August, and soon after she was lost. It was held that, as she had been completely loaded and cleared out at the usual place for vessels of such tonnage, and as she had dropped down the river beyond its mouth on the 1st of August, nothing further being then required to be done by a ship of her size before proceeding on her sea voyage, she had "sailed from Demerara" on that day within the meaning of the warranty.

In *Moir* v. *Royal Exchange Assurance Co.*,(*y*) a ship, warranted "*to depart*" from Memel, her port of loading, "*on or before the 15th September*," completed her loading, obtained her clearances, and sailed on the 9th of September, in a state of perfect readiness for her voyage. In consequence, however, of the wind changing, she could not get out of harbour, and was obliged to come to anchor, and was detained within the mouth of the harbour till after the 15th of September. She afterwards sailed and was lost. It was held that the warranty was not complied with.

In *Baines* v. *Holland*,(*z*) a ship, insured "*at and from New York to Quebec, during her stay there, and from thence to the United Kingdom, the ship being warranted to sail from Quebec on or before the 1st of November*, 1853," sailed on the 15th of October from New York on her voyage to the United Kingdom, by way of Quebec, and on such voyage, before her arrival at Quebec, and after the 1st of November, was totally lost. It was held that, so far as regarded the voyage from New York to Quebec, there was no limitation of time, and that therefore the underwriters were liable, even though the loss occurred after the 1st of November, but that, so far as regarded the voyage from Quebec to the United Kingdom, the underwriters would not have been responsible unless the ship had sailed from Quebec on or before the 1st of November.

If the warranty is "to sail from" a coast or district on or

(*y*) 3 M. & S. 461; 4 Camp. 84. See also *Pittegrew* v. *Pringle*, 3 B. & Ad. 514; *Graham* v. *Barras*, 5 B & Ad. 101.

(*z*) 10 Ex. 802.

before a certain day, the ship must sail from the last port of loading within that time.(*a*)

To sail from a district.

§ 140. (3) The expression "*not to sail after*" a certain day means that the ship, furnished and prepared in all respects, must be in the prosecution of her voyage on the day named.

Cases as to meaning of warranty to sail: "Not to sail after."

In *Cochrane* v. *Fisher*,(*b*) a ship was insured with a warranty "*not to sail for British North America after the* 15*th day of August*, 1831." On the 10th of August, when lying in the Custom House Dock, Dublin, she was chartered for a voyage to Quebec, and great exertions were made to get her ready by the 15th, on account of the warranty. On the 15th, being in all respects ready for sea, she was cleared at the Custom House, and hauled out of dock into the river for the purpose of proceeding on her voyage. The wind was then blowing right up the river, so dead against the ship that no sail could be set; but she was warped down the river till the tide ebbed, when she took the ground. Next day, the wind being still right against her, she was warped down to a point beyond which further progress in that way was impossible, and where she again took the ground at the ebb. On the 17th the wind shifted, and she immediately set sail and proceeded on her voyage. It was held, upon these facts, that the ship was in the prosecution of her voyage on the 15th of August, as she had on that day made a movement, though in the river, for the purpose of proceeding to sea, and over the sea, to British North America, and that, inasmuch as no particular *terminus à quo* was specified in the policy, the warranty was satisfied.

Duty to Sail and be ready to Load, according to terms of Charter-party.

Duty when ship chartered to proceed to loading port.

§ 141. When the ship is chartered to proceed to a port of loading, the master's first duty under the charter-party is to sail for that port, and be ready to load there within the times, if any, respectively stipulated for those purposes. On his arrival he should put himself under the orders of the agent for the shippers, or for the ship, if there be one, and entrust to one of these the clearing of the ship, and the doing what is necessary to obtain permission for her to load.

Consequences of not sailing or being ready to load according to charter.

In case of non-compliance in either of the above respects with the stipulation of the charter-party, the charterer will often by its terms be discharged from his obligation to load a cargo,(*c*) and, unless the delay is due to perils excepted in the charter-

(*a*) Phillips on Ins. 775.

(*b*) 2 Cr. & M. 581; 1 Cr. M. & R. 809. Disting. *Nelson* v. *Salvador*, M. & M. 309, *supra* § 318.

(*c*) *Shadforth* v. *Higgin*, 3 Camp. 585; *Freeman* v. *Taylor*, 8 Bing. 124; *Crookewit* v. *Fletcher*, 1 H. & N. 893. Disting. *McAndrew* v. *Chapple*, L. R. 1 C. P. 643.

party, the master and owners will in general be liable for the damage caused thereby to the charterer.(*d*) When, therefore, the ship has been fitted and manned, the master must, with due diligence, take her to the place where she is to receive her cargo.

The usual term of the charter-party is, that the ship shall sail *on* or *before*, or with the first fair wind *after*, a certain day, or shall be "ready to load" within a certain period.

When non-compliance with terms of charter-party releases charterer from his engagements.

§ 142. Where parties by a charter-party agreed that the ship should proceed to Trieste, and there load a complete and full cargo of wheat for the United Kingdom, "*the vessel to sail from England on or before the* 12*th January next*," in an action against the merchant for not providing this cargo at Trieste, it was held that the sailing of the ship from England on or before the day fixed was a condition precedent, upon non-performance of which the freighters were at liberty to throw up the charter.(*e*)

So where the charter-party provided that the ship should sail from Amsterdam to Liverpool "*on or before the* 15*th March next*," it was held that the sailing of a ship on or before that day was a condition precedent to the obligation of the charterer to load the ship, although the sailing of the ship was prevented by one of the perils excepted in the charter-party; and the ordinary exception of perils of the seas, &c., contained in the charter-party, was followed by the words "throughout the charter-party."(*f*)

So where by a charter-party it was agreed that the ship should load in the London Docks, and that the ship should be ready for loading on or before the 10th of November, or that the charterers should have the option of cancelling the agreement, it was held that the stipulation as to the 10th of November was a condition precedent, on the non-performance of which the charterers were entitled to cancel the agreement.(*g*)

So a provision in a charter-party that a ship should be ready to sail "in all May" was held to be a condition precedent.(*h*)

Delay does not release charterer where voyage performed.

§ 143. But non-compliance with the terms of the charter-party will not release the charterer from his liability to pay freight where the voyage has been performed, and its object has not been frustrated.(*i*)

(*d*) *McAndrew* v. *Adams*, 1 B. N. C. 29. As to the measure of damages for failure to be at the loading port at the agreed time, see *Welch* v. *Anderson*, 66 L. T. 442. Where a tug was let on a time charter "commencing from the 8th of September," it was held in Scotland that this meant from the earliest moment on that day, and that the charterer was entitled to recover the loss he sustained by reason of the tug not being delivered to him until 2.30 p.m. *McKenzie* v. *Liddell*, 10 Ct. of Sess., 4th ser., 705.

(*e*) *Glaholm* v. *Hayes*, 2 Scott, N. R. 471; 2 M. & G. 257.

(*f*) *Crookewit* v. *Fletcher*, 1 H. & N. 893.

(*g*) *Seeger* v. *Duthie*, 8 C. B. N. S. 45.

(*h*) *Oliver* v. *Fielden*, 4 Ex. 135.

(*i*) *Constable* v. *Cloberie*, Palmer, 396: cp. *Bornmann* v. *Tooke*, 1 Camp. 377; *Davidson* v. *Gwinne*, 12 East, 381.

Nor where warranty complied with.

It is convenient here to mention the case of *Van Baggen* v. *Baines*,(*k*) where it was held on the facts that the terms of the charter-party had been complied with. The stipulation there was that the ship should "*sail and proceed from Amsterdam with all convenient speed to Liverpool, to leave Amsterdam not later than March.*" On the 30th of March the ship, with a part of her ballast on board, quitted the dock of Amsterdam, and, on the same evening, reached the entrance of the North Holland Canal. On the 31st she arrived at Alkmaar, and stayed there during the first and second of April, being engaged there taking in the remainder of her ballast. On the 3rd of April she set sail and left Nieuve Diep, having completed her crew there on the 9th, and on the 17th she arrived in Liverpool. In an action against the charterers for not loading a cargo it was held that the words "*leave Amsterdam*" did not mean "*sail on her voyage from Amsterdam,*" and that, therefore, the agreement in the charter-party had been fulfilled.

Implied agreement not to delay.

§ 144. In all contracts by charter-party, where there is no agreement as to time, it is an implied stipulation that there shall be no unreasonable or unusual delay in commencing the voyage. All the authorities agree that the voyage must be commenced within a reasonable time.(*l*) In such a case, therefore, when all is ready, and the weather is favourable, it is the master's duty to sail without delay; unless indeed he is bound by a warranty in the policy not to sail before a day which has not yet arrived.(*m*) But he ought not to set out on a voyage during tempestuous weather,(*n*) or if there is substantial reason to fear capture.(*o*)

When delay releases charterer, though no express agreement as to time of sailing.

A delay or a deviation which goes to the whole root of the matter, and deprives the charterer of the whole benefit of his contract, or entirely frustrates his object in chartering the ship, relieves him from the duty of loading a cargo, and is an answer to an action for not doing so. If the delay falls short of this, it does not defeat the charter-party, but gives the charterer an action for damages.(*p*)

Examples.

§ 145. Thus, in *Freeman* v. *Taylor*,(*q*) a ship was under charter to proceed from London to the Cape, and having delivered goods there to proceed with all convenient speed to Bombay, where the

(*k*) 9 Ex. 523.

(*l*) Per Tindal, C.J., *McAndrew* v. *Adams*, 1 B. N. C. at p. 38; 1 Maude & P. 4th ed. 74.

(*m*) Where such a warranty relates to a coast or district, it is no breach to sail from one part of the district to another, as for the purpose of joining convoy. Phillips, 774; Arnould, § 227, p. 638.

(*n*) Molloy, B. 2, c. 2, s. 4; Maude and Poll., 4th ed., 137; Abbott, 13th ed., 396: and see *Heyman* v. *Parish*, 2 Camp. 149.

(*o*) *Pole* v. *Cetovitch*, 9 C. B. N. S. 430.

(*p*) Per Willes, J., *McAndrew* v. *Chapple*, L. R. 1 C. P. 643, 648; *Freeman* v. *Taylor*, 8 Bing, 124; *Clipsham* v. *Vertue*, 5 Q. B. 265; *Jackson* v. *Union Marine, &c.*, L. R. 8 C. P. 572; 10 C. P. 125; see also *Smith* v. *Wilson*, 8 East, 437; and cases collected in 1 Maude and Poll. 4th ed., pp. 307-310.

(*q*) 8 Bing. 124.

charterer was to load a cargo of cotton for England. The master arrived at the Cape, and might have proceeded on his voyage in two days, but remained there ten, taking in cattle for the Mauritius, and went round by the Mauritius on his way to Bombay, at which port he arrived six weeks later than he would otherwise have done, had he proceeded thither direct. The charterer's agent, in consequence of the delay, refused to load the cargo. In an action for not loading, the jury found that the deviation was of such a nature as to deprive the freighter of the benefit of his contract; and the Court held that the charterer was therefore excused from furnishing a cargo.

Again, in *Jackson* v. *Union Marine Insurance Co.*,(*r*) an action on a policy on freight, the ship having been chartered to proceed with all possible despatch (dangers and accidents of navigation excepted) from Liverpool to Newport, and there load a cargo of iron rails for San Francisco, got aground in Carnarvon Bay, and was not ready to load her cargo till nearly eight months later. The jury found that the delay was such as to "put an end in a commercial sense to the commercial speculation entered into by the shipowners," and it was held on that finding that although the delay had been caused by excepted perils, which relieved the shipowner from any liability to an action, yet by reason of it the charterers were not bound to load a cargo, and there was therefore a loss of freight by perils of the sea, for which the underwriters were liable.

Remedy in damages.

§ 146. Where, on the other hand, a charter-party contained a clause that the ship should "with all convenient speed (on being ready), having liberty to take an outward cargo for owners' benefit direct or on the way, proceed to E., and load a full cargo of cotton," and the ship deviated to C., and arrived at E. a few days later than she would have done if she had gone there direct; it was held that the clause was not a condition precedent, and that the delay afforded no justification to the freighter for refusing to load a cargo, but that his remedy for any damage he had suffered by the delay was by cross-action.(*s*)

Though the ship arrive before the cancelling date.

The master may be liable for the loss occasioned by delay or deviation, though the ship arrive at her port of loading before the date at which the charterer would under the terms of his agreement be entitled to cancel the charter-party. Thus, in *McAndrew* v. *Adams*,(*t*) a ship was chartered in October, 1832, to go in ballast from Portsmouth to St. Michael's, and to bring back a cargo of oranges direct to London, and if she did

(*r*) L. R. 8 C. P. 572; 10 C. P. 125.
(*s*) *McAndrew* v. *Chapple*, L. R. 1 C. P. 643.
(*t*) 1 Bing. N. C. 29.

not arrive at St. Michael's by the 31st January, 1833, the charterer was to be at liberty to annul the charter-party. If the master had proceeded direct to St. Michael's, the cargo might have been delivered in London about the 1st of January, but instead of doing so, he sailed to Oporto, returned to Portsmouth, and then sailed for St. Michael's, where he arrived before the 31st January, 1833. His ship was then loaded with oranges, and arrived in London on the 1st of February. It was held that the charterers were entitled to recover damages for the deviation, but that under the circumstances the damages must be merely nominal.

Shipowner not liable for delay occasioned by excepted perils.

§ 147. It is usual to insert in charter-parties a clause relieving the shipowners, and sometimes also the charterers, from liability for the consequences of certain uncontrollable events. These are commonly called "excepted perils," and the operation of the clause is generally expressed to be "during the said voyage." It has been held that a clause so limited has no operation until the ship has left her original point of departure named in the charter-party, though that may be also her port of loading.(*u*) But where the ship is chartered to proceed to a port of loading, and thence with cargo to her destination, the clause applies to the outward voyage, and that although liberty is reserved to carry an outward cargo for owner's benefit,(*x*) and to the period at the loading port.(*y*)

In *Harrison* v. *Garthorn*,(*x*) the ship was chartered to proceed to Alexandria to arrive within a margin of three weeks from Nov. 15, 1870, with liberty to take cargo out for owner's benefit, and there load a cargo from charterers' agents, and proceed to Hull or London, all dangers and accidents of the seas during the said voyage always excepted. The ship did not arrive at Alexandria until after the time stipulated. In an action for damages for breach of the charter-party, a plea that the delay in the outward voyage was due to excepted perils, was held to be good.

Shipowner may refuse to receive cargo where excepted perils render chartered voyage impossible.

§ 148. We have seen (*z*) that the clause in question does not deprive the charterer of his right to refuse to load a cargo when the delay, even though occasioned by excepted perils, is such as to "put an end to the commercial speculation." It may under

(*u*) *Crow* v. *Falk*, 8 Q. B. 467. This decision was approved in *Valente* v. *Gibbs*, 6 C. B. N. S. 270, but has been much doubted. See per Sir J. Hannen, *The Carron Park*, 15 P. D. 203, 206, cp. *The Accomac*, 15 P. D. 208, and *Hayn* v. *Culliford*, 3 C. P. D. 410; 4 *ib.* 182 (where the negligence excepted was in navigating the ship), distinguished in *Norman* v. *Binnington*, 25 Q. B. D. 475; *infra* § 367.

(*x*) *Harrison* v. *Garthorne*, 26 L. T. N. S. 508, and see *Hudson* v. *Hill*, 43 L. J. C. P. 273; *Barker* v. *McAndrew*, 34 L. J. C. P. 191; *The Carron Park*, 15 P. D. 203.

(*y*) *Bruce* v. *Nicolopulo*, 11 Ex. 34

(*z*) *Jackson* v. *Union Marine, &c., Co.*, L. R. 10 C. P. 125; *supra* § 145.

certain circumstances, entitle the shipowner to refuse to receive one. Where, for example, "restraint of princes" was excepted in the charter-party, and by reason of a blockade at the intended port of discharge, it became impossible to carry through the adventure within a reasonable time, and no cargo had yet been put on board, the contract remaining wholly executory, it was held that the owners were justified in refusing to receive a cargo.(*a*)

Vis major disabling both parties, relieves them from their obligation.

§ 149. Apart from the exceptions in the charter-party, where without fault on the part of either shipowner or charterer, the loading is rendered impossible by *vis major*, in the sense that both parties are disabled from performing their respective duties under the contract, the shipowner from placing his ship at the disposal of the charterer, and the charterer from supplying her with a cargo, as by outbreak of a war rendering the performance of the contract illegal, which necessarily dissolves it,(*b*) or by a Government prohibition at the port of loading, no action will lie against the shipowner for not having his ship ready to receive cargo, nor, conversely, against the charterer for not being ready to load it.(*c*) This rule is not, however, universally, or even generally, applicable where the disabling circumstances arise after the ship has been placed at the disposal of the charterer.(*d*)

Demurrage and Damages for Detention.(*e*)

Loading and discharging joint acts of shipowner and goods owner.

§ 150. The respective duties of shipowner and shipper or consignee, with reference to the loading and discharging of the cargo, if not expressly prescribed by the contract of carriage,(*f*) are regulated by the custom of the port. In general, however, each of these operations is the joint act of both parties.(*g*) The

(*a*) *Geipel* v. *Smith*, L. R. 7 Q. B. 404.

(*b*) *Avery* v. *Bowden; Reid* v. *Hoskins*, 5 E. & B. 729; 6 *ib.* 953.

(*c*) *Cunningham* v. *Dunn*, 3 C. P. D. 443, following *Ford* v. *Cotesworth*, L. R. 5 Q. B. 544, *infra* § 162. But see *Barker* v. *Hodgson*, 3 M. & S. 267. See further as to what circumstances will justify delay or departure from the direct course of the voyage, *infra* §§ 205–215; as to excepted perils, §§ 357–369.

(*d*) See cases cited *infra* §§ 162 *et seq.*

(*e*) The law relating to demurrage at the port of loading and at the port of discharge, and to the duties of consignor and consignee to use dispatch in loading and discharging is, *mutatis mutandis*, in many respects the same. In order, therefore, to avoid repetition, the charterer and the consignee or his assigns are frequently spoken of in this and the following sections under the general term "merchant," and the contract governing the rights of the parties, whether contained in a charter-party or a bill of lading, or to be derived from the two read together, is indifferently described as the "contract of carriage."

(*f*) In *Harris* v. *Best* (68 L. T. 76) the cargo was "to be taken to and from alongside at merchant's risk and expense, but to be taken on board and discharged by the owners and at their expense," the stevedores being appointed by charterers, "but employed and paid for by owners," and ten working days allowed for loading. The charterers were held not liable for a detention of three days arising from delay on the part of the stevedores.

(*g*) See as to loading, Carver, ss. 250, 608; as to discharging, *Ford* v. *Cotesworth*, L. R. 4 Q. B. 127; 5 Q. B. 544; *Budgett* v. *Binnington* (1891), 1 Q. B. 35, 38, per Lord Esher, M.R.; *Hick* v. *Rodocanachi*, (1891) 2 Q. B. 626, 641, per Fry, L.J.; affd. sub. tit., *Hick* v. *Raymond*, (1893) A. C. 22; *Dobell* v. *Watts*, 91 L. T. J. 192.

consequences of failure or unpunctuality in its performance, where this does not arise from the default of either party, nor from an excepted peril, depends upon the terms of the contract of carriage. And these, again, must be considered, whether so expressed or not, as made with reference to the custom of the port.(*h*)

Lay days for loading and discharging.

§ 151. The contract of carriage very generally prescribes a period of time during which the charterer may detain the ship for loading and discharging without becoming liable to any payment beyond the agreed freight. In some cases the merchant is allowed a fixed period for loading, and another fixed period for discharging. In others he is allowed a fixed number of days or hours for the loading and discharging taken together.(*i*) In others a fixed period is allowed for one of these operations, and there is no express agreement as to the other. Again, the time allowed is sometimes limited absolutely, as where the cargo is to be loaded or discharged in so many days or hours; sometimes relatively, by reference to the capacity of the ship, as where the cargo is to be discharged at the rate of so many tons *per day*. In some cases, again, the period allowed is not fixed at all, but is described as "the usual and customary time,"(*k*) and must then be determined by what is usual and customary at the port.

Where no "lay days," a reasonable time implied.

Where the number of days during which the merchant may detain the ship is not ascertained, either absolutely or by reference,(*l*) as where it provides merely that the ship shall load or discharge "in the customary manner,"(*m*) or "as customary,"(*n*) the law implies a stipulation that he may have a reasonable time both for loading and discharging.

The days allowed for loading and discharging are called indifferently "lying days," "laying days," or more commonly "lay days."

"Demurrage:" its strict meaning.

§ 152. Where the number of lay days is prescribed by contract, it is usual also to provide that the merchant may be at liberty to

(*h*) *The Jaederen*, (1892) P. 351; *Postlethwaite* v. *Freeland*, 5 Ap. Ca. 599, per Lord Blackburn, at p. 613.

(*i*) Sometimes the charter-party leaves it open to question whether the days for loading and discharging are intended to be reckoned separately or added together, *Marshall* v. *Bolckow*, 6 Q. B. D. 231. It was held that the intention of the charter-party in that case was that they should be reckoned separately.

(*k*) As in *Rodgers* v. *Forresters*, 2 Camp. 483. This is not the same thing as the reasonable time implied by law. See §§ 162, 164, *infra*.

(*l*) In *Weidner* v. *Hoggett* (1 C. P. D. 533), the master having refused to sign a charter-party which did not expressly limit the time for loading, without a separate undertaking of the shipper's agent that it should be done in ten working days, was held entitled to recover in an action against such agent damages for the detention of the vessel beyond that time.

(*m*) See *Ford* v. *Cotesworth*, L. R. 4 Q. B. 127; 5 Q. B. 544; *Lockhart* v. *Falk*, L. R. 10 Ex. 132, 136; *Fowler* v. *Knoop*, 4 Q. B. D. 299.

(*n*) This clause "does not apply to the time to be taken in loading, or to the penalty for not loading in a given time, but only to the manner of loading." *Dunlop* v. *Balfour*, (1892) 1 Q. B. 507, 518; *Castlegate S.S. Co.* v. *Dempsey* *ibid.* 854.

detain the ship for a certain number of days beyond the lay days on payment of a fixed sum per day or per hour. This sum is called demurrage, and the days so provided for are called "days on demurrage," or "demurrage days."(*o*) In some cases a corresponding allowance for loading or discharging in less than the allowed lay days is reserved to the charterer, and is then called "despatch money."(*p*)

"Demurrage days."

"Despatch money."

"Demurrage:" its popular meaning.

The above is the strict meaning of the word demurrage, but it is an "elastic word," and is popularly used in contracts of affreightment in at least two other senses. It is sometimes applied to an agreed rate of payment for detention where no demurrage days are agreed upon, and where, as it would seem, the shipowner is under no obligation to the charterer to keep his ship waiting beyond the number of lay days.(*q*) It is also sometimes applied to unliquidated damages, or "compensation for undue detention."(*r*)

Damages for detention.

§ 153. Such a detention of the ship beyond the lay days and days on demurrage, if any, is a delay of the shipowner's subsequent traffic, giving rise to a claim for compensation in the nature of demurrage,(*s*) and, as we have just seen, sometimes popularly called by that name. It is more properly described as "damages for detention." The agreed rate of demurrage, if any, is *primâ facie* the measure of this compensation. But it is open both to the shipowner and freighter to show that this is not a fair measure under the circumstances.(*t*)

"Working days." "Running days." "Days."

§ 154. The lay days are sometimes defined as "working days," sometimes as "running days," and sometimes as "days" simply. In some cases they are further defined as days of so many hours each. Where the term "working days" is used, all days on which it is not usual to work at the port where the ship is—*e.g.* in England, Sundays and holidays—are excluded from the computation. The expression "running days" means days on which the ship, if at sea, would be "running"; in other words they include Sundays and holidays, and are to be counted, unless something appears to the contrary, consecutively; but this meaning may be modified by the words of the document in which they occur, or by the custom of the port.(*u*) The expression

(*o*) Per Lord Esher, M.R., *Nielsen* v. *Wait*, 16 Q. B. D. at p. 70; per Cleasby, B., *Lockhart* v. *Falk*, L. R. 10 Ex. at p. 135.

(*p*) See *Laing* v. *Hollway*, 3 Q. B. D. 437.

(*q*) *Harris v. Jacobs*, 15 Q. B. D. 247; see also *Sanguinetti* v. *Pacific Steam Co.*, 2 Q. B. D. 238, 251 (per Brett, J.A.); *Clink* v. *Radford* (1891), 1 Q. B. 625; *Restitution, &c., Co.* v. *Pirie*; 61 L. T. N. S. 330; 64 *ib.* 491 (*n*).

(*r*) Per Cleasby, B., *Lockhart* v. *Falk*, *ubi sup.*; *Bannister* v. *Breslauer*, L. R. 2 C. P. 497, a case of doubtful authority; see *Clink* v. *Radford*, *ubi sup.*

(*s*) *Randall* v. *Lynch*, 2 Camp. 357; 12 East, 179; Abbott, 13th ed. 268, 269.

(*t*) *Moorsom* v. *Bell*, 2 Camp. 616; Abbott, *ubi sup.*

(*u*) *Nielsen* v. *Wait*, 16 Q. B. D. 67. See especially per Lord Esher, M.R., at pp. 71–73; and per Cotton, L.J., at p. 77.

"days," without more, has the same meaning as running days.(*x*)

Fractions of day: how counted.

§ 155. When demurrage is payable at a certain rate per day, in the absence of any stipulation to the contrary, a fraction of a day will be counted as a day; (*y*) but it seems that in the case of a claim not for demurrage, but for damages for detention, the measure of damage would, properly speaking, be the loss naturally arising from the actual detention.(*z*) And where, on the other hand, the time for loading or discharging is fixed by days, and despatch money is payable at so much per hour, each day saved by the merchant will be reckoned as a day of twenty-four hours.(*a*)

Liability to demurrage and damages for detention of consignee or indorsee of bill of lading.(*b*)

§ 156. The contract to pay demurrage which is contained in the charter-party is made between the shipowner and the freighter. But where the bill of lading stipulates for the payment of demurrage, or incorporates by apt words of reference the terms of the charter-party in that respect, the consignee or indorsee of the bill of lading to whom the property in the goods therein mentioned passes, becomes, under the Bill of Lading Act, 1855,(*c*) liable for demurrage according to the stipulation of the bill of lading or of the charter-party, as the case may be,(*d*) and this liability may extend to demurrage at the port of loading.(*e*) In the absence of an express stipulation, or of an effective reference to the terms of the charter party, the implied term of the contract contained in the bill of lading, that delivery shall be taken in a reasonable time, is equally binding on such consignee or indorsee.(*f*) And apart from the statute, whether the consignee has the property in the goods, or only holds the shipping documents by way of security, or as an agent, the fact of his receiving the goods on presentation of the bill of lading is evidence of an implied contract that he will observe the conditions on which delivery is to be made thereunder;(*g*) unless

(*x*) Per Lord Esher, M.R., 16 Q. B. D. at p. 73; *Brown* v. *Johnson*, 10 M. & W. 331, 334, per Lord Abinger, C.B.; *Niemann* v. *Moss*, 29 L. J. Q. B. 206. But see per Lindley, L. J., 16 Q. B. D. at p. 79; and *Commercial S.S. Co. v. Boulton*, L. R. 7 Q. B. 346, where the word days was qualified by the context.

(*y*) *Commercial S.S. Co.* v. *Boulton*, L. R. 10 Q. B. 346.

(*z*) Carver, s. 631.

(*a*) *Laing* v. *Holloway*, 3 Q. B. D. 427.

(*b*) As to the lien for demurrage and when it exists, see § 300 *infra*. As to when the master may sue in his own name for demurrage, see § 315 *infra*.

(*c*) 18 & 19 Vict. c. 111, s. 1; and see *Sewell* v. *Burdick*, 10 Ap. Ca. 74. The liability of the consignees and indorsees of the bill of lading is further discussed *infra* §§ 302-310; and the effect of the Bills of Lading Act, §§ 350–354.

(*d*) *Porteous* v. *Watney*, 3 Q. B. D. 223, 534; *Gullischen* v. *Stewart*, 11 *ibid.* 186; 13 *ibid.* 317.

(*e*) See *Gray* v. *Carr*, L. R. 6, Q. B. 622; Carver, s. 637; §§ 300, 307, 344, 345 *infra*.

(*f*) *Fowler* v. *Knoop*, 4 Q. B. D. 299; Carver, s. 636.

(*g*) *Allen* v. *Coltart*, 11 Q. B. D. 782, 784. See *Jesson* v. *Solly*, 4 Taunt. 52; *Stindt* v. *Roberts*, 2 C. B. 712; *Wegener* v. *Smith*, 15 C. B. 285; *Chappel* v. *Comfort*, 10 C. B. N. S. 802; Carver, s. 639; as to the authority of an agent to bind his principal by such a contract, see *Hingston* v. *Wendt*, 1 Q. B. D. 367.

indeed he repudiates the liability to do so before taking delivery.(*h*)

Master's duty to wait during lay days and demurrage days.

§ 157. The lay days and demurrage days are allowed for the benefit of the shipper. He is entitled to the whole of them for the performance of his contract. It is the master's duty to wait during the lay days, unless he is expressly discharged therefrom in unequivocal language by some person competent so to do, and also, if so required, until the end of the demurrage days, if any.(*i*) This rule is sometimes modified, by liberty reserved to the master to land the goods if not applied for within a limited number of hours of the ship's arrival at her port of discharge. In such a case he is not bound to exercise this right, and his not doing so is no defence to an action for demurrage.(*k*)

When the lay days commence.

When the lay days commence.

§ 158. In considering when the lay days commence, it must be borne in mind that the charterer is not required to load until he has notice that the ship is ready to receive cargo;(*l*) whereas neither he nor the consignee is entitled to any notice of her readiness to discharge.(*m*) Subject to this, there seems to be no difference in principle with respect to the commencement of lay days for loading and for discharging.(*n*) The general rule is that the lay days do not commence until the ship is ready to load or discharge at the place mentioned for that purpose in the charter-party.(*n*) Charter-parties however differ, in that, some name a large area, as a port, river, or dock, as the terminus for loading or discharging; others name a limited area, as a particular quay or a particular berth. In the former case the charterer is entitled to have the ship at the usual place of loading or discharging in the named area,(*o*) though not, in the absence of a custom to that effect,(*p*) at the particular berth or quay at which the ship is to be discharged.(*q*) Where, on the other hand,

What is place of loading or discharging?

(*h*) *County of Lancaster S.S.* v. *Sharp*, 24 Q. B. D. 158.

(*i*) *Avery* v. *Bowden; Reid* v. *Hoskins*, 5 E. & B. 729; 6 E. & B. 953; *Barrick* v. *Buba*, 2 C B. N. S. 563; see also *Hudson* v. *Ede*, L. R. 2 Q. B. 566; 3 Q. B. 412. Where no lay days are stipulated for, custom may prescribe the time during which the master is bound to wait. See *Aste* v. *Stumore*, C. & E. 319.

(*k*) *Hick* v. *Rodocanachi* (1891), 2 Q. B. 626, 632; affd. nom. *Hick* v. *Raymond* (1893), A. C. 22.

(*l*) *Stanton* v. *Austin*, L. R. 7 C. P. 653; per Brett, L.J., *ubi inf.*

(*m*) *Harman* v. *Clarke*, 4 Camp. 159; *Harman* v. *Mant*, *ib.* 161; per Williams, J., *Erichsen* v. *Barkworth*, 3 H. & N. 894; per Brett, L.J., *ubi inf.*

(*n*) See per Brett, L.J., *Nelson* v. *Dahl*, 12 Ch. D. at pp. 581—583.

(*o*) It seems that the merchant cannot insist on this if the usual place is rendered inaccessible by repairs, a wreck, or other cause. See *The Cargo ex Argos*, L. R. 5 P. C. at pp. 160, 161.

(*p*) Evidence of such a custom was admitted in *Norden S. S. Co.* v. *Dempsey*, 1 C. P. D. 654; and in *Hick* v. *Tweedy*, 63 L. T. N. S. 765; see also *The Felix*, L. R. 2 Ad. 273.

(*q*) *Tapscott* v. *Balfour*, L. R. 8 C. P. 46, 52: *Nelson* v. *Dahl*, *ubi sup.*; *Brereton* v. *Chapman*, 7 Bing. 559; *Brown* v. *Johnson*, 10 M. & W. 331; *Kell* v. *Anderson*, *ib.* 498; *Commercial S.S. Co.* v. *Boulton*, L. R. 7 Q. B. 346; see also *The Norway*, B. & L. at p. 401; *Ash-*

a particular quay or a particular berth is named as the place for loading or discharging, that is the terminus of the voyage for that purpose, and the master is not in the one case entitled to place his ship at the disposal of the charterer, nor, in the other, do the lay days for discharging begin to run until the ship is at the named place,(*r*) under such circumstances that the port authorities will allow her to lie there.(*s*) And the result is the same, whether the place be specified in the charter-party by name or by reference to an option to be exercised by the charterer, as where the ship is chartered to proceed to "any safe berth as ordered;"(*t*) unless, indeed, the charterer's option is limited by such words as a "ready quay berth," in which case the owner is entitled to demurrage, or damages in the nature of it, for any time during which his ship is detained beyond the lay days by reason of having been ordered to a berth which was not ready.(*u*)

Where ship-owner has an option to name berth.

Where the named destination is a large area, containing more than one usual place of discharge, the better opinion seems to be that in the absence of an option reserved to him by contract or custom, the merchant is not entitled to select one of such places and have the ship there before being bound to take delivery.(*x*) It has been held, however, but not in an action for demurrage, that where the contract provided for the unloading of the ship "at the usual place of discharge," and there were two such places at the port, there being evidence that it was customary in such a case for the consignee to name one of them, the master, on the one hand, was not bound to wait for instructions, but might proceed on arrival to moor at either of them; and it seems that if the discharge had begun there, the lay days would have counted from his doing so:(*y*) while, on the other hand, the merchant might exercise the option of directing the ship to either of such places, even after the master had begun to moor at the other, and without first tendering him the expenses incurred in so doing.(*z*)

Where more than one usual place of discharge.

Where the merchant, having an option to name the place of delivery, refuses absolutely to do so, this amounts to a refusal to take delivery, and is a breach of the contract, entitling the ship-

Where merchant refuses to exercise option.

croft v. *Crow Orchard, &c. Co.*, L. R. 9 Q. B. 540; and *Davies* v. *Mc Veagh*, as explained by Brett, L.J., in *Nelson* v. *Dahl*, 12 Ch. D. at pp. 588—590; and by Bowen, L.J. (1891) 2 Q. B., at p. 651; *Cargo ex Argos, ubi sup.*

(*r*) *Nelson* v. *Dahl*, 12 Ch. D. at pp. 582, 584; *Tharsis Sulphur, &c., Co.* v. *Morel* (1891), 2 Q. B. 647 (disapproving *The Carisbrook*, 15 P. D. 98).

(*s*) *Good* v. *Isaacs* (1892), 2 Q. B. 555.

(*t*) *Tharsis, &c., Co.* v. *Morel, ubi sup.*; *Tapscott* v. *Balfour*, L. R. 8 C. P. 46; *Murphy* v. *Coffin*, 12 Q. B. D. 87; *Good* v. *Isaacs, ubi sup.*

(*u*) *Harris* v. *Jacobs*, 15 Q. B. D. 247.

(*x*) *The Norway*, B. & L. at p. 401.

(*y*) L. R. 2 Ad. at p. 279.

(*z*) *The Felix*, L. R. 2 Ad. 273; cp. *Stewart* v. *Rogerson*, L. R. 6 C. P. 424. The decision may be supported by reference to the custom; but, so far as it rested "on general principles," it seems to be inconsistent with Dr. Lushington's decision in *The Norway, ubi sup.*

owner to damages equal to the full amount of the freight, but not to any demurrage.(*a*)

"So near thereto as she may safely get."

§ 159. The duty of the shipowner to have his ship at the named place for loading and discharging before the lay days can commence, is generally modified by the addition of the words "or so near thereto as she may safely get." These words, however, do not entitle him to require the cargo to be brought to or taken from the ship before her arrival at the named place, unless the obstruction which prevents her getting there, or getting there in safety, is "permanent," in the sense that "it is an obstacle which cannot be overcome by the shipowner by any reasonable means, except within such time as, having regard to the objects of the adventure of both charterer and shipowner is as a matter of business wholly unreasonable. . . . . Notice must be taken of what the particular adventure in each case is."(*b*) An obstruction which is one of the usual accidents of navigation at the port in question is a risk to be undertaken by the ship.(*c*)

Illustrations.

In accordance with the foregoing principles it has been held that the owner of a ship which is delayed in getting to her discharging berth by neap tides, is not entitled to have her discharged before she gets there;(*d*) and that a ship which, having reached the mouth of a river or of an inland sea, is there detained many miles distant from her port of destination by want of water on the bar, or by a periodical accumulation of ice, is not as near to her destination as she may safely get.(*e*) On the other hand, where a ship having arrived in the port of London and at the gates of the dock to which she was ordered, was there refused admission, the dock being so crowded that there was no probability of her obtaining a berth for some months, and was thereupon moored as near to the dock as she could safely lie; it was held that her owners were entitled to call upon the charterer to take delivery outside the dock, and that the charterer must pay demurrage and damages for detention for not doing so.(*f*) And so, where a ship was chartered to proceed to "Hamburg, or so near thereto as she could safely get," and on arriving at Stade, it was found that her draught of water was such that it was permanently impossible for her to get to Hamburg without being lightened, it was

(*a*) *Stewart* v. *Rogerson*, L. R. 6 C. P. 424.

(*b*) Per Brett, L.J., *Nelson* v. *Dahl*, 12 Ch. D. at p. 593; per Cotton, L.J., at p. 598; see also per Lord Watson, 6 Ap. Ca. pp. 59, 60; per Lord Blackburn, at p. 52.

(*c*) Per Cotton, L.J., 12 Ch. D. 598. Per Lord Blackburn, 6 Ap. Ca. at p. 51.

(*d*) *Parker* v. *Winlo*, 7 E. & B. 942; *Bastifell* v. *Lloyd*, 1 H. & C. 388.

(*e*) *Schilizzi* v. *Derry*, 4 E. & B. 873; *Metcalfe* v. *Britannia Ironworks Co.*, 1 Q. B. D. 613; 2 *ibid.*, 423, 426, per Lord Coleridge, C.J.; *infra* § 283. Cp. *Castel* v. *Trechman*, 1 C. & E. 276, where the prevention was by blockade.

(*f*) *Nelson* v. *Dahl*, 12 Ch. D. 569; affd. *Dahl* v. *Nelson*, 6 Ap. Ca. 38.

held that the charterer was bound to take delivery at Stade of so much cargo as it was necessary to discharge, in order to enable her to proceed up the river to Hamburg.(*g*) And the allegation of a custom that merchants were not bound to take delivery elsewhere than at Hamburg was held to be inadmissible, as inconsistent with the terms of the written contract.(*h*)

"So near thereto as she may safely get."

Similarly, by the insertion of the clause in question with reference to the port of loading, the shipowner is relieved from the obligation of completing the loading, and, as it seems, from that of tendering his ship for loading at all, at a place from which it would be permanently impossible for her to get away with her full cargo on board.(*i*) But the mere fact that if she completes her loading at the named place, she will be temporarily detained there by neap tides will not, as it seems, relieve him from the duty of taking a full cargo there; nor would the insertion of a condition that she is to "load always afloat" improve his position in this respect, though it would entitle him to refuse to berth her at a place where she could not lie afloat during the loading.(*k*)

Applied to port of loading.

§ 160. If the shipowner desires to protect himself from the risk of hindrance by neap tides, he should insert in his contract such a clause as will make the intention clear. Thus, where by charter the ship was to proceed to Sharpness, "or so near thereto as she may safely get at all times of the tide and always afloat,"(*l*) the shipowner was allowed to recover demurrage for a delay in unloading of four days during which she was prevented by neap tides from reaching Sharpness. A similar result was arrived at when the ship was "to proceed to Liverpool to discharge in a dock as ordered on arriving, if sufficient water, or so near thereto as she may safely get, always afloat."(*m*)

Special clauses further relieving shipowner.

§ 161. It does not follow that because the ship cannot get with all her cargo on board to the named place of discharge, or to the usual place of discharge in the named port, that the master is entitled to have delivery taken of all the cargo, as soon as the ship arrives "as near" to her destination "as she may safely get" without being lightened. Indeed, it seems that when the ship may be sufficiently lightened by the discharge of a small proportion of her cargo, the merchant is entitled, on having taken delivery of so much, to require the master to proceed to his destination, and there discharge the remainder; and it has been

Semble, merchant may require ship to be taken to named place of discharge after taking sufficient cargo to lighten her.

(*g*) *Hayton* v. *Irwin*, 5 C. P. D. 130. It was not contended that the master was entitled to have all the cargo taken at Stade. In *Capper* v. *Wallace*, 5 Q. B. D. 163, a similar case, it was held that the master was entitled to treat the mouth of a canal, thirty miles from the named port, as the place of discharge.

(*h*) *Hayton* v. *Irwin*, *ubi sup.* See also *The Alhambra*, 6 P. D. 68.

(*i*) *Shield* v. *Wilkins*, 5 Ex. 304.

(*k*) See as to the effect of these words *The Curfew* (1891), P. 131; cf. *The Alhambra*, 6 P. D. 68.

(*l*) *Horsley* v. *Price*, 11 Q. B. D. 244.

(*m*) *Allen* v. *Coltart*, 11 Q. B. D. 782.

Custom not to count as lay days period of such further transit.

so held in Scotland.(n) And where there is a custom to that effect, the period occupied in passing from the place of lightening to the usual places of discharge, will not be reckoned as lay days, unless such a construction is inconsistent with the express terms of the contract of carriage. The mere use of the words "running days" is not sufficient to exclude such a custom.(o)

Semble, when no custom, this period counted.

It would seem, however, that in the absence of such a custom the time so occupied will be counted as part of the lay days. In *Gibbons* v. *Buisson* (p) it was agreed to convey a cargo to Oporto, and if the river was in possession of an enemy, to unload at Foz, outside the harbour. The freight was to be £475, or if the ship could enter Oporto, discharge and reload there, £300 only. Twenty-five days were allowed for unloading; lay days to commence when the ship was off Foz, or other point where she is to be discharged; continue whilst there; cease if blown off the coast by stress of weather, and recommence when again at anchor at her station; £4 per day demurrage for every day over and above the said laying days. The ship arrived at Foz on the 3rd of June, and an enemy being in possession of the river, commenced unloading there. The ship was detained at Foz, partly for the convenience of the freighter and partly by bad weather, till the 25th of August, and by that time had discharged seven-eighths of her cargo. The enemy then having quitted the river, she entered Oporto, where she discharged the remainder of the cargo. It was held that the lay days commenced at Foz, and that the shipowners were entitled to demurrage from the 28th of June.

Consequences of Unforeseen Causes of Delay.

Consequences of unforeseen circumstances: where lay days not prescribed. "A reasonable time:" how ascertained.

§ 162. We have seen (q) that in the absence of an express stipulation, the merchant is allowed "a reasonable time" for loading and unloading. In determining what this expression means, regard must be had, in the first place, to the usage of the port. Beyond this, the question has been much canvassed, whether it is "to be ascertained with reference to what is usual, and can be foreseen and provided for, or with reference to the events which actually happen, whatever they may be."(r) In the former view, the expression "reasonable time" would be equivalent to "the usual and customary time,"(s) which has in one case been said to be the time allowed in the absence of an express stipulation.(t)

(n) *Hilstrom* v. *Gibson*, 8 Sess. Cas. (Sc.), 3rd Ser., 463; *Capper* v. *Wallace*, 5 Q. B. D. 163, 166; per Ld. Blackburn, *Dahl* v. *Nelson*, 6 Ap. Ca. at pp. 50, 51; but see per Brett, L.J., *The Alhambra*, 6 P. D. at p. 73.

(o) *Nielsen* v. *Wait*, 16 Q. B. D. 67

(p) 1 B. N. C. 283.

(q) *Supra* § 151.

(r) Per Lindley, L.J., *Hick* v. *Rodocanachi* (1891), 2 Q. B. at pp. 632–3.

(s) Per Fry, L.J. (1891), 2 Q. B. at p. 644. This view derives support from the judgment of Thesiger, L.J., in *Wright* v. *New Zealand Shipping Co.*, 4 Ex. D. at p. 170; and from *Adams* v. *R. M. S. Co.*, 5 C. B. N. S. 492.

The distinction is an important one, since "the usual and customary time" for a ship of a given tonnage and construction to load a given cargo at a given port is at any time ascertainable, and a stipulation in such terms would be in effect a stipulation for a fixed period, with, it would seem, all the consequences flowing from it.(*u*)

"A reasonable time": how ascertained.

The question was neatly raised in *Hick* v. *Raymond*,(*x*) when the cases on the subject were discussed by the Court of Appeal, whose decision was afterwards affirmed by the House of Lords. The main question there determined was, whether consignees and holders of bills of lading which contained no reference to the charter-party, nor any stipulations limiting a time for discharging the cargo, or exempting the consignees from the consequences of strikes, were liable for a delay in discharging, caused, without any default on their part, by a strike of dock labourers. By reason of the strike, the consignees were prevented from receiving the cargo for nearly a month beyond the time that would have been required for its delivery under ordinary circumstances. The shipowner, however, was always ready to do his part of the delivery, notwithstanding the strike. It was held by the Court of Appeal and the House of Lords, reversing on this point the decision of Matthew, J.,(*y*) that the consignees were not liable for the detention of the vessel.

Hick v. *Raymond.*

It follows from the above decision that the reasonable time must in each case be measured by reference to the circumstances existing when the operation of loading and discharging ought to be performed;(*z*) the corresponding duty of the charterer or consignee being to use reasonable diligence or reasonable despatch;(*a*) and that where, after the ship is ready to load or discharge, no time being limited in express terms for that purpose, the charterer or consignee is hindered or prevented by *vis major*, or other unforeseen and extraordinary circumstances for which he is not responsible,(*b*) from performing his part of the operation, he will not be answerable for the delay occasioned thereby. On *à fortiori* grounds, where, no time being expressly limited for the purpose, both shipowner and shipper or consignee are prevented by *vis major*, or other extraordinary circumstances for which neither

Where no express provision for lay days, charterer not liable for delay beyond his control.

(*t*) *Burmester* v. *Hodgson*, 2 Camp. 488.

(*u*) *Infra* § 163. See per Fry, L.J., *ubi sup.*; *Ashcroft* v. *Crow Orchard Co.*, L. R. 9 Q. B. 540, 543. See, however, *The Alne Holme* (9 T. L. R. 364), and cases cited *infra* § 164.

(*x*) (1893) A. C. 22, affg. (1891) 2 Q. B. 626 (*Hick* v. *Rodocanachi*).

(*y*) 64 L. T. N. S. 138.

(*z*) See also per Lopes, L.J., *Budgett* v. *Binnington* (1891), 1 Q. B. at p. 41.

(*a*) Per Fry, L.J., *Hick* v. *Rodocanachi* (1891), 2 Q. B. at p. 644; *Fowler* v. *Knoop*, 4 Q. B. D. 299; *Ford* v. *Cotesworth*, L. R. 4 Q. B. 127; 5 Q. B. 544; *Postlethwaite* v. *Freeland*, 4 Ex. D. 155, 160, per Thesiger, L.J., 5 App. Ca. 599, 621, per Ld. Blackburn; *Castlegate S.S. Co.* v. *Dempsey*, (1892) 1 Q. B. 854.

(*b*) In *Hill* v. *Idle*, 4 Camp. 327, the delay arose from the nature of the goods shipped by the merchant, and he was held liable for it.

party is responsible, such as a threatened bombardment of the port, from performing their respective parts in loading or discharging, the shipowner will not be able to recover from the shipper or consignee for detention arising therefrom.(c)

Consequences of unforeseen circumstances where lay days prescribed.

§ 163. It is quite otherwise where the number of the lay days is prescribed by the contract, whether charter-party or bill of lading, which governs the rights of the parties. In such a case, "from the leave given to the" charterer or consignee "to keep the ship so long, there is an implied covenant that he will keep her no longer."(d) And this covenant is absolute; so that if, after the lay days have begun to run, the loading or discharging is hindered or prevented, by any cause not arising from the act or default of the shipowner or his servants, the charterer or consignee, as the case may be, will be responsible for the delay occasioned thereby; and this notwithstanding that the shipowner is prevented, equally with the shipper or consignee, from performing his part of the loading or discharging.

Budgett v. *Binnington.*

In *Budgett* v. *Binnington,*(e) the charter-party contained a clause fixing the number of lay days for loading and discharging, and allowing ten days on demurrage over and above the lay days. The lay days having been all exhausted at the port of loading, the shipowners had agreed with the shippers to allow a further period of *six* running days (Sundays excepted) for discharging. The bill of lading incorporated the terms of the charter-party as to discharging; but neither charter-party nor bill of lading contained any exception of strikes. By the custom of the port of discharge, the work of discharging was the joint act of shipowner and consignees. After the lay days for discharging had begun to run a strike occurred, which rendered it impossible for shipowner and consignees alike to do their respective parts of the work. The shipowners having exercised their lien for the demurrage occasioned by the strike, and the consignees having paid the amount claimed under protest, the latter brought an action to recover it back. It was held that the contract to pay demurrage was absolute and unconditional, and that the delay in delivery having been caused by the act of persons over whom the shipowner had no control, there was nothing to relieve the consignee from the absolute contract to pay demurrage.

Where lying time limited by reference to capacity of ship.

§ 164. The same principle appears to be applicable whether lying time is limited to a prescribed number of days or hours; or by reference to the quantity of cargo to be loaded or discharged, as where the expression "at the rate of so many tons per working day" (f) is used; or to the custom of the port, by such phrases

(c) *Ford* v. *Cotesworth,* L. R. 4 Q. B. 127; 5 Q. B. 544. Cp. *Cunningham* v. *Dunn,* 3 C. P. D. 443. *Supra* § 149.

(d) *Randall* v. *Lynch* 2 Camp. p. 357.

(e) 25 Q. B. D. 320; (1891) 1 Q. B. 35.

(f) As in *Clink* v. *Radford* (1891), 1 Q. B. 819.

as "with the usual despatch of the port,"(*g*) or "in the usual and customary time."(*h*) It is, however, important to bear in mind that in the latter case the merchant will not be liable for a delay which arises merely from conforming to the custom of the port, as in waiting for turn to discharge into lighters or into bonded warehouses.(*i*)

By reference to custom.

It must also be observed that an undertaking to discharge "with all despatch as customary," or "with all despatch according to the custom of the port," does not have the effect of fixing a definite time for discharging the cargo. The reference to custom in such cases relates only to the manner of discharging and not to the time to be occupied in doing so.(*j*) And the shipper is entitled to a reasonable time for that purpose, with the consequences indicated above.(*k*) A stipulation that the steamer shall be discharged "as fast as she can deliver," the charterer's obligation is limited by the ability of the steamer to deliver in accordance with the custom of the port, and under the actual circumstances at the time of discharge.(*l*)

Reference to custom relates in general to manner and not to time.

In *Postlethwaite* v. *Freeland*,(*m*) the undertaking of the charterer was as follows:—"The cargo to be brought to and taken from alongside at merchant's risk and expense" . . . . and "to be discharged with all despatch according to the custom of the port." The custom of the port was to discharge into lighters, which it was necessary to warp over the bar, and of which there were only seven at the port, and no others obtainable, vessels having the use of them in turn of arrival. Owing to the number of vessels awaiting their turn, the ship was detained for more than a month before her turn of discharging arrived. It was held that the charterers were not responsible for this delay, Lord Selborne, C., observing(*n*) that, "looking at the natural conditions and rules of the port . . . . the insufficiency of . . . . lighters . . . . could not be regarded as an impediment . . . . separable from the custom and practice of the port."(*o*)

Delay through conformity to custom: *Postlethwaite* v. *Freeland*.

(*g*) *Ashcroft* v. *Crow Orchard Colliery Co.*, L. R. 9 Q. B. 540; *Kearon* v. *Pearson*, 7 H. & N. 386: see also § 162, *supra*. In *The Alne Holme* (9 T. L. R. 364) it was argued that the words "with customary steamer despatch" had not the effect of fixing the lay days, but no decision on this point was given.

(*h*) As in *Rodgers* v. *Forresters*, 2 Camp. 483.

(*i*) *Postlethwaite* v. *Freeland*, 4 Ex. D. 155; 5 Ap. Ca. 599, 608; *Rodgers* v. *Forresters*, 2 Camp. 483; *Burmester* v. *Hodgson*, *ibid.* 488. And see *Castlegate S.S. Co.*, v. *Dempsey* (1892), 1 Q. B. 854; *The Jaederen* (1892), P. 351. Disting. *Ashcroft* v. *Crow Orchard Co.*, L. R. 9 Q. B. 540, where the delay was in part due to the charterer's own act; and *Wright* v. *New Zealand Co.*, 4 Ex. D. 165(*n*); note (*o*) *infra*.

(*j*) *Castlegate, &c., Co.* v. *Dempsey* (1892), 1 Q. B. 854; reversing S.C., *ibid.* 54, and explaining *Postlethwaite* v. *Freeland*, 4 Ex. D. 155; 5 Ap. Ca. 599; *Good* v. *Isaacs* (1892), 2 Q. B. 555; and see *The Alne Holme*, *supra*, note (*g*).

(*k*) § 162.

(*l*) *The Jaederen*, (1892) P. 351; *infra*.

(*m*) 4 Ex. D. 155; 5 Ap. Ca. 599; cp. *The Jaederen*, (1892) P. 351; *Good* v. *Isaacs* (1892), 2 Q. B. 555.

(*n*) 5 Ap. Ca. at p. 610.

(*o*) *Wright* v. *New Zealand Co.*, 4 Ex. D. 165 (*n*), a somewhat earlier case, where it was held by the Court of Appeal upon very similar facts, but in the absence

The Jaederen.

The Jaederen,(p) a somewhat similar case, was similarly decided. The charter-party contained the clause "Steamer to be discharged as fast as she can deliver," and provided for fourteen days on demurrage. By the custom of the port, a reference to which was held to be implied in the contract, the work of discharging was done, for both shipowners and charterers, by the servants of the Dock Company. A delay in discharging arose from causes for which the Dock Company was alone responsible, viz. the crowded state of the dock, whereby the ship was prevented from at once obtaining a berth, and the crowded state of the quays, which hindered her discharge after she had obtained a berth. In an action by the shipowners for demurrage, it was held that the plaintiffs failed to establish "a breach by the defendants in not discharging the vessel 'as fast as she could deliver.' . . . . The steamer could not deliver any quicker than she did, and for that reason the defendants had not committed any breach of the contract."

Regular turn.

§ 165. Where the contract is to load or discharge "in regular turn," the merchant will be responsible for all delay consequent on the turn being missed after the ship is ready to receive or deliver her cargo.(q) Subject to this liability his obligation would seem to be to use "reasonable despatch," as explained above;(r) although an undertaking that the ship "shall . . . . load . . . . taking her turn . . . . and receiving prompt despatch," would cast upon him a heavier responsibility.(s) What "regular turn" is must depend upon the custom (if any) of the port.(t)

Illustrations.

§ 166. In accordance with the principles explained in *Budgett* v. *Binnington,*(u) when the time for loading or discharging is prescribed by the charter-party or bill of lading, the shipper or consignee, as the case may be, is not excused from the payment of demurrage or damages for detention, when not occasioned by excepted perils, because the port or the river by which the goods were to be conveyed thither was frozen up;(x) or because the operation of discharging was prevented by bad

of any stipulation as to time for discharging, that the charterer was liable for the delay, must be supported, it seems, if at all, on the ground that "no custom or other circumstances existed which would have made it impossible for the charterer, by the use of reasonable diligence, to provide himself with lighters . . . earlier than he did." Per Lord Selborne, C., 5 Ap. Ca. at p. 609: see also per Lord Blackburn, at pp. 613, 617, 620.

(p) 1892. P. 351.

(q) *Lawson* v. *Burness,* 1 H. & C. 396; *Jones* v. *Adamson,* 1 Ex. D. 60; *Taylor* v. *Clay,* 16 L. J. Q. B. 44.

(r) *Supra* § 162.

(s) *Elliott* v. *Lord,* 52 L. J. P. C. 23.

(t) *Lawson* v. *Burness,* 1 H. & C. 396; *Leidemann* v. *Schultz,* 14 C. B. 38; *King* v. *Hinde,* 12 L. R. Ir. 113; Carver, § 620.

(u) 25 Q. B. D. 320; (1891) 1 Q. B. 35.

(x) *Barrett* v. *Dutton,* 4 Camp. 333; *Kearon* v. *Pearson,* 7 H. & N. 386.

weather;(y) or because the consignee was prevented from getting his goods by delay on the part of consignees of superincumbent goods;(z) or because an infectious disorder having broken out after the lay days commenced, all public intercourse was prohibited by law of the port;(a) or because the delay was occasioned by the detention from the consignee, by third persons, of the bill of lading;(b) or by the wrongful act of custom-house officers.(c) Nor is the crowded state of the docks an excuse,(d) unless, as has already been pointed out, in the case of lying time prescribed by reference to the custom of the port, the delay arises merely from conforming to such custom.(e)

When merchant liable for unforeseen delays.

A fortiori, the merchant will not be excused where the delay arises from matters for which he is wholly or in part responsible, as where in the case of loading a charterer has not got a cargo ready for the ship, and is unable to procure one before the expiration of the lay days, by reason of want of facilities at the mines from which it must come;(f) or where, in the case of discharging, the vessel was delayed by the failure of the merchant to produce a Treasury order required by law in respect of his shipment.(g)

Where merchant responsible for the cause of delay.

For what Detentions Merchant is not Liable.

§ 167. But the shipowner cannot claim demurrage or damages for any detention which is attributable to himself, whether it be his neglect or inability to get clearance papers, or the damaged condition of his ship, or his own failure to deliver the cargo in accordance with the contract contained in the charter-party, that prevents his sailing.(h) On the contrary, he may himself incur liability to the merchant for delay arising from the last-mentioned cause.(i)

For what detentions freighter is not liable.

§ 168. Nor can the shipowner claim demurrage where the merchant is prevented from performing his part of the loading or discharging by an "excepted peril," provided that the clause giving him exemption is aptly framed, having regard to the

Exemption from demurrage by "excepted perils."

(y) *Thiis* v. *Byers*, 1 Q. B. D. 244; cp. *Jones* v. *Adamson*, 1 Ex. D. 60.

(z) *Porteous* v. *Watney*, 3 Q. B. D. 534; *Leer* v. *Yates*, 3 Taunt. 387.

(a) *Barker* v. *Hodgson*, 3 M. & S. 267.

(b) *Erichsen* v. *Barkworth*, 3 H. & N. 601, 894.

(c) *Bessey* v. *Evans*, 4 Camp. 131.

(d) *Randall* v. *Lynch*, 2 Camp. 252; *Leer* v. *Yates*, 3 Taunt. 387; *Brown* v. *Johnson*, 10 M. & W. 331; *Tapscott* v. *Balfour*, L. R. 8 C. P. 46; *Ashcroft* v. *Crow Orchard Co.*, L. R. 9 Q. B. 540; *Davies* v. *McVeagh*, 4 Ex. D. 265.

(e) *Postlethwaite* v. *Freeland*, 4 Ex. D. 155; 5 Ap. Ca. 599, and cases cited § 164 *supra*.

(f) *Elliott* v. *Lord*, 52 L. J. P. C. 23.

(g) *Hill* v. *Idle*, 4 Camp. 327; *supra* § 162, note (b).

(h) *Benson* v. *Blunt*, 1 Q. B. 870; *Hanson* v. *Donaldson*, 1 Ct. of Sess., 4th Ser. 1066; *Dobell* v. *Watts*, 91 L. T. J. 192; per Cur.; *Budgett* v. *Binnington*, 25 Q. B. D. 320; (1891) 1 Q. B. 35. On the same principle, a Divisional Court decided the case of *Nelson* v. *McLeod*, Ap. 24 (Sh. Gaz., May 1st), 1891.

(i) *Dobell* v. *Watts*, 91 L. T. J. 192.

custom of the port, to relieve him from the consequences of not performing the particular duty in which he has failed.

Hudson v. *Ede.*

In *Hudson* v. *Ede* (*k*) the ship was chartered to proceed to Sulina, and there load a cargo of grain, thirty running days to be allowed for loading and unloading, with ten days on demurrage; "detention by ice not to be reckoned as laying-days." Sulina is a port at the mouth of the Danube. There were no warehouses there in which grain could be stored, and grain for shipment at that port was necessarily stored at other places, a hundred miles or more above it, from whence it could only be brought in lighters by river, there being no other means of transport. This state of things was well known in the grain trade, though not known to the shipowner or his broker. At the expiration of six of the lay days, no cargo having been yet provided by the charterer, and at an unusually early time of year, the Danube above Sulina, though not the port itself, became frozen over, and so continued till the 8th of February. The charterer was unable in consequence to supply a cargo, and the ship was detained until after that date. It was held in the Exchequer Chamber, affirming the judgment of the Queen's Bench, that the conveyance by river to Sulina was under the circumstances to be considered as part of the act of loading, and that the obstruction of the river was "a detention by ice" within the meaning of the charter-party.

Excepted perils in general relate only to matters arising after cargo ready to load.

§ 169. In view of the peculiar facts of the foregoing case, the decision would probably have been the same if the exemption had been limited to matters "preventing the loading."(*l*) It is, nevertheless, true that an exception limiting the charterer's liability to demurrage will be construed as relating only to what takes place after the cargo is ready to put on board the ship, unless a contrary intention appears from the contract, or, as in *Hudson* v. *Ede*, from the facts with reference to which it was made.(*m*) In *Kay* v. *Field*,(*n*) the ship was chartered to proceed to Cardiff, East Bute Dock, and there load from the agents of the freighters a cargo of rail iron . . . . to be loaded as fast as ship could take on board and stow . . . . "detention by frost . . . . not to be reckoned as lay days." The freighter's agents, but not other manufacturers of rail iron, had their wharf on a canal leading into the dock, and it was their practice, but not that of others, to load ships by means of lighters passing down the canal. Detention was incurred by reason of a frost which prevented lighters coming

(*k*) L. R. 2 Q. B. 566; 3 Q. B. 412, followed in *Sailing Ship Allerton Co.* v. *Falk*, 6 Asp. 287; and in *The Alne Holme* (9 T. L. R. 364), a discharging case.

(*l*) See per Lord Selborne., C. 9 Ap. Ca. at p. 477.

(*m*) Per Brett, L.J., 10 Q. B. D. pp. 247–8; per Lindley, L.J., at p. 249.

(*n*) 10 Q. B. D. 241.

down the canal, although the dock itself was not frozen. It was held by the Court of Appeal, reversing the decision of Pollock, B.,(*o*) that the charterers were not protected by the exception.

Exception limited to accidents "preventing the loading."

The rule above stated is even more clearly applicable when the exception is expressly limited to accidents "preventing the loading." The leading case on such a clause is *Grant* v. *Coverdale*,(*p*) where, upon facts very similar to those of *Kay* v. *Field*, it was held in the Court of Appeal and the House of Lords that the charterer was not protected from liability; Lord Selborne, C., pointing out, in distinguishing the case from *Hudson* v. *Ede*,(*q*) that the canal was not the only means of transporting the cargo, which might, though at great expense to the charterer, have been brought down to the dock in carts.(*r*)

When demurrage at port of loading, ceases.

§ 170. The demurrage ceases on the day on which the loading is completed. The merchant, therefore, is not liable for the detention of the ship, after she is loaded, by the state of the weather, as by frost;(*s*) or by the inability of the master to obtain his clearances, as when the custom-house had been accidentally destroyed.(*t*) Nor is he liable for further demurrage or damages, if after the ship has sailed she is driven back to port, and there detained by frost or bad weather, even though, had she not been kept waiting for her cargo beyond the demurrage days, she would have started at a time of year when there was less likelihood of adverse winds, and under circumstances in which other ships, in fact, performed safely the same voyage as that for which she was chartered.(*u*)

When the Master must Sail with Convoy.

Warranty to sail with convoy.

§ 171. In time of war, it has been usual for the Government, or for the commander of some station, to appoint a naval force, or "convoy," as it is termed, consisting of one or more men-of-war, to escort and protect merchant ships proceeding to certain ports. If the shipowners or master have entered into any undertaking or warranty that the ship shall sail with convoy, she must repair to the place of rendezvous for that purpose, and the master must put himself under the protection and control of the convoy appointed under the authority of the Government for the protection of merchant ships bound to the place of his destination. A departure from the direct course of the vovage for the purpose of seeking convoy is not in general a deviation.(*x*)

(*o*) 8 Q. B. D. 594.

(*p*) 11 Q. B. D. 543; 9 Ap. Ca. 470; reversing 8 Q. B. D. 600. See also *Stephens* v. *Harris*, 56 L. J. Q. B. 516; 57 *ib.* 203; *The Village Belle*, 30 L. T. N. S. 232.

(*q*) L. R. 2 Q. B. 566; 3 Q. B. 412.

(*r*) 9 Ap. Ca. at p. 477.

(*s*) *Pringle* v. *Mollett*, 6 M. & W. 80.

(*t*) *Barrett* v. *Dutton*, 4 Camp. 333.

(*u*) *Jamieson* v. *Laurie*, 6 Bro. P. C. 474.

(*x*) *Infra* § 213.

Such a warranty or undertaking used to be very common in policies of insurance in time of war; and whenever it is inserted in such a policy, the policy becomes absolutely void if the warranty is not complied with, and the insurers are not answerable for any loss happening by any risk, even though wholly independent of and unconnected with the warranty or its breach.

Consequences of not complying with this warranty.

If the warranty or undertaking be made by the shipowner or master with the merchant, and be not complied with, the shipowner or master may become liable for a loss happening by tempest or other accident, for which otherwise they would not have been liable, and even if the ship return safe, they may, in cases where the merchant is entitled under his policy to a return of premium if the ship sail with convoy, become bound to compensate him for the loss of that advantage. For the merchant, having trusted to this warranty, and so trusting, having made a similar warranty in his contract with the underwriters, and having lost the benefit of his insurance or of a return of premium by the breach of the similar warranty by the shipowners and master, has a right to receive from them whatever he has lost by their misconduct.(*y*)

What is "convoy."

§ 172. The convoy must be a ship or ships of war appointed under the authority of Government; that is, immediately by the Government, or by the commander-in-chief on a particular station. The protection of a ship of war, accidentally bound on the same voyage, although discharging the office of a convoy, is not a convoy within the meaning of the warranty.(*z*) Sometimes a force is appointed to accompany ships for a part only of their voyage, and is to be succeeded for the residue by another. At other times a small force is detached from the main body to bring them to a particular point. If a ship sail under the protection of the force thus appointed (*a*) or detached,(*b*) the warranty is satisfied.(*c*)

What is a compliance with this warranty.

§ 173. This warranty in general requires not only that the vessel shall commence the voyage under the protection of convoy, but also that she shall continue during its course under the same protection,(*d*) unless prevented by tempest or other unavoidable accident, in which case the owners and master will be excused, if the latter does all in his power to keep the benefit of convoy.(*e*) If the convoy be dispersed by a storm, the master may run for his port of discharge.(*f*)

(*y*) Abbott, 13th ed. 396, 397; Park on Ins. c. 18; *Sanderson* v. *Busher*, 4 Camp. 54 n.

(*z*) *Hibbert* v. *Pigou*, 2 Park on Ins. c. 18, p. 694.

(*a*) *Smith* v. *Readshaw*, 2 Park, c. 18, p. 708; *De Garay* v. *Clagget*, *ibid.*

(*b*) *Manning* v. *Gist*, 3 Doug. 74; *Audley* v. *Duff*, 2 B. & P. 111

(*c*) Abbott, 13th ed. 398.

(*d*) *Lilly* v. *Ewer*, 1 Doug. 72; *Jeffery* v. *Legender*, 3 Lev. 320.

(*e*) *Jeffery* v. *Legender*, *ubi sup.*; *Laing* v. *Glover*, 5 Taunt. 49.

(*f*) *Audley* v. *Duff*, 2 B. & P. 111; Marshall Inst. 4th ed. 294.

From what point convoy must be taken.

The warranty is, however, complied with by the master taking such convoy as is provided by the Government for ships bound on the voyage insured, and if convoy is usually furnished for only of the voyage, it is no breach of the warranty to perform the a part remainder without convoy.(*g*) The warranty to sail or depart with convoy means, in short, that the ship shall depart with convoy, not immediately from her lading port, but only from the place of rendezvous appointed for ships bound from her lading port. From many ports, and among others from the port of London, no convoy ever sails.(*h*) It has, therefore, been held sufficient for a ship bound from London to sail with convoy from the Downs;(*i*) and even from Spithead, when there was no convoy appointed at the Downs;(*k*) and it has also been held, that a ship is not bound to put herself, between the loading port, and the place of rendezvous, under the protection of a convoy intended for ships on other destinations.(*l*)

In *Ridsdale* v. *Shedden*,(*m*) by a policy on a ship at and from Portneuf to London, a part of the premium was to be returned if the ship sailed with convoy on or before the 31st of October. It appeared that ships sailing from Portneuf must clear at Quebec; that the master obtained his sailing instructions on the 27th of October, and that the ship having arrived at Quebec on the 28th, and obtained her clearances on the 29th, could not procure a pilot to pilot her down the river St. Lawrence till the 30th, on which day she joined the convoy some leagues below Quebec, but within the limits of that port, which she cleared with convoy on the 31st; it was held, that the assured were entitled to a return of premium, although the convoy had left Quebec on the 28th.

To what point.

Neither does the warranty require that the ship should sail with convoy bound to the actual place of her destination. The warranty is complied with and satisfied if the ship sail with the only convoy appointed for ships going to the place of her destination. On a policy on goods in *The Little Betsy*, at and from London to St. Sebastian, in Spain, warranted to depart with convoy for the voyage, it appeared that no convoy was appointed directly to St. Sebastian, but that the ship sailed under convoy, the commander of which had orders to proceed to Gibraltar. On the voyage, the commander made a signal for one of his frigates to part company and take with her such ships as were bound to St. Sebastian, and see them safe as far as Bilboa. The frigate, in obedience to the signal, parted company

(*g*) Phillips on Ins. 780.
(*h*) Park, Ins. c. 18, p. 701.
(*i*) *Lethulier's Case*, 2 Salk. 443.
(*k*) *Gordon* v. *Morley*, 2 Str. 1265.
(*l*) *Warwick* v. *Scott*, 4 Camp. 62.
(*m*) 4 Camp. 107.

and took with her *The Little Betsy*, and soon after parted from her in chase of a strange ship, and did not afterwards join her. It was held that the *The Little Betsy* had complied with the warranty to sail with convoy.(*n*)

Duty to obtain sailing orders, &c.

§ 174. In order to satisfy this warranty, it is not sufficient for the master to sail in company with the ships of war appointed as the convoy, he must also, before the departure, obtain, or at least use all due diligence to obtain, the sailing instructions and orders delivered out by the commander of the convoy to the masters of the trading ships that are to sail under his protection.(*o*) Without such sailing orders, if the fleet were dispersed by a storm, the master would not know the place of rendezvous, and if the fleet were attacked he would not be able to obey signals; and, in short, would not possess the means of communicating with, or availing himself of, the protecting force.

On the other hand, if the master do all in his power to obtain sailing instructions, but is prevented from doing so by the badness of the weather,(*p*) or by the refusal of the commander of the convoy to deliver them,(*q*) the warranty is complied with.

Neglect to keep with convoy; disregard of signals.

Any neglect to sail or to keep with the convoy is a breach of the warranty, and avoids the policy. Thus, where signals from the convoy were neglected,(*r*) and where a ship, after getting under weigh, waited for the master to come on board so long that she lost her place in the convoy,(*s*) it was held that the underwriters were discharged.(*t*)

If the ship do not quit her moorings until a few hours after the convoy, and by the occurrence of a calm, with a heavy sea, is prevented from joining the convoy, it is no excuse for the master that he made every practicable exertion to come up with the convoy, and that he would have done so without difficulty if the wind had continued as it was when he left his moorings.(*u*)

Deviation: its Effect on the Contract of Carriage.

What it is to deviate.

§ 175. One of the most important of all the master's many serious duties is to strictly pursue the regular and customary course of the voyage contemplated by the charter-party and the policy of insurance, onward to its specified termination, or to the port where orders for discharge are to be received, with all safe, con-

(*n*) *D'Eguino* v. *Bewicke*, 2 H. Bl. 551.

(*o*) *Webb* v. *Thompson*, 1 B. & P. 5; *Anderson* v. *Pitcher*, 2 B. & P. 164, per Lord Eldon, C.J., at p. 169.

(*p*) *Victorin* v. *Cleeve*, 2 Str. 1250.

(*q*) *Verdon* v. *Wilmot*, 2 Park, c. 18, p. 696, n.

(*r*) *Taylor* v. *Woodness*, 2 Park, c. 18, p. 707.

(*s*) *Waltham* v. *Thompson*, 1 Marsh. Ins. 4th ed. 294.

(*t*) Maude & Poll. 4th ed. 504.

(*u*) *Sanderson* v. *Busher*, 4 Camp. 54, in note.

venient, and practicable expedition, and without any deviation from such a course, except such as is justified by overwhelming necessity,(x) or by one of the causes mentioned hereafter,(y) or by express leave given in the policy of insurance.(z)

What it is to deviate.

In almost all voyages, custom and long usage have prescribed a certain course of navigation as the one which is the safest, most direct, and most expeditious mode of proceeding from one terminus to the other. The course thus prescribed is the lawful course of the voyage; and being a matter of general mercantile notoriety, is presumed to have been foreseen and contemplated by the parties to the policy of insurance, and to the contract of affreightment, at the time of entering into these contracts, and is therefore considered as much to form part of them as though it were set forth therein in express terms.(a)

Effect of deviation on liability under contract of carriage.

§ 176. If the vessel deviates unnecessarily and without justification from the proper course, and if, during the deviation, she is captured,(b) or strikes a rock, or perishes by storm, or the cargo is wetted by a tempest, and thereby the ship takes fire and the cargo is lost, the master and owners are liable. Nor is it a defence in such cases that there is no natural or necessary connection between the wrong of the master in deviating from the proper course, and the loss itself; or that the same loss might have been occasioned by the same cause if the ship had proceeded in her direct course.(c)

Thus, A put lime on board B's barge, to be conveyed from the Medway to London. The master of the barge deviated unnecessarily from the usual course, and during the deviation a tempest wetted the lime, and the barge taking fire thereby, the whole was lost. It was held that B, the owner of the barge, was liable.(d)

"Liberty to call."

§ 177. The same rule was recently applied in *Leduc* v. *Ward*,(e) where goods were shipped under a bill of lading at Fiume for delivery at Dunkirk, perils of the sea excepted, the ship having "liberty to call at any ports in any order." She sailed for Glasgow, and was lost with her cargo off that port. It was held that the liberty to call extended only to such ports as were substantially in the course of a voyage from Fiume to Dunkirk; that Glasgow was not such a port; and that the goods having

(x) Arnould, § 143; Phillips, 981.
(y) *Infra* §§ 208–215.
(z) See *infra* §§ 194–200.
(a) Arnould, § 143. See as to deviation, *Davis* v. *Garrett*, 6 Bing. 716; as to delay, *Freeman* v. *Taylor*, 8 Bing. 124; *Mount* v. *Larkins*, 8 Bing. 108; *Palmer* v. *Marshall*, 8 Bing. 317.
(b) *Parker* v. *James*, 4 Camp. 112.
(c) Per Tindal, C.J., 6 Bing. at p. 723.
(d) *Davis* v. *Garrett*, 6 Bing. 716; and see *Scaramanga* v. *Stamp*, 4 C. P. D. 316; 5 *ib.* 295, *infra* § 214.
(e) 20 Q. B. D. 475; followed in *Margetson* v. *Glynn*, (1892) 1 Q. B. 337; W. N. (1893), p. 76, H. L.

been lost during a deviation, although by an excepted peril, the shipowners were liable for their loss to the bill of lading holders. Parol evidence that the shippers knew that the ship was to proceed *viâ* Glasgow was held inadmissible, as varying the terms of the bill of lading.

Effect of delay.

§ 178. In like manner, if through the master's neglect to avail himself of all the means in his power for conveying the cargo to its port of delivery with due diligence and expedition, (*f*) or by any unreasonable delay, the voyage is retarded, and damage accrues thereby to the owners of the cargo, the owners of the ship would be liable to make good the loss.

Thus in the *Wilhelm*,(*g*) the master of a ship, while waiting for cargo, omitted to take in sufficient stores and provisions for his voyage. Frost set in whilst he was subsequently taking in such provisions and stores, and the ship was consequently frozen in port, and detained from the beginning of October until the breaking up of the ice in the ensuing year: it was held that the owners of the ship were responsible to the owners of the cargo for any loss accruing from such detention.

Under bottomry bond.

As we shall see hereafter,(*h*) a deviation may, in case of subsequent loss, render the owners and master personally liable to the holders of a bottomry bond.

Deviation: its effect on the Policy.

Condition not to deviate implied in policy.

§ 179. In every contract of insurance, by means of a voyage policy,(*i*) the law implies that the meaning of the parties is, that the assured shall only enjoy the protection of the policy so long as he strictly pursues the regular and customary course of the voyage insured with all safe, convenient, and practicable expedition,(*k*) and does not, after the risk has begun, enhance or vary the perils insured against by the policy, without necessity or just cause.(*l*) The undertaking not to depart from the lawful course of the voyage insured, is called a condition *not to deviate*.

It is only upon this condition, never expressed, but universally implied, that the underwriter agrees to indemnify the assured. Any failure, therefore, to comply with it substitutes a different risk for that which the underwriter undertook, and from that

(*f*) As to the duty of the master of a steamship to use his steam, see *Fraser* v. *Telegraph, &c., Co.*, L. R. 7 Q. B. 566; and cp. *Hogarth* v. *Miller*, (1891) A. C. 48.

(*g*) 14 L. T. N. S. 636. As to delay in proceeding to the port of loading and its consequences, see *supra*, §§ 141 *et seq.*

(*h*) *Infra* §§ 454, 455.

(*i*) An express warranty is sometimes inserted in a time policy defining the limits within which a ship may trade. For a recent example of this, see *Dryer* v. *Birrell*, 10 Ct. of Sess. (Sc.), 4th ser. 585.

(*k*) Arnould, § 143; 3 Kent Com. 312.

(*l*) Phillips on Ins. 977.

moment frees him from his liability.(*m*) This condition means not only that the ship shall follow the course of the voyage specified, which custom has prescribed, but also that she shall commence and complete the voyage with usual and reasonable expedition.(*n*) Its meaning.

§ 180. Therefore any alteration of the risk, either by voluntary and unnecessary departure from the usual course or general mode of pursuing the voyage insured, if there be such, or from the most direct or expeditious, safe and convenient course; or by any unreasonable delay either in commencing or in prosecuting the voyage insured, unless such departure or delay be excused by some of the causes mentioned hereafter,(*o*) will absolve the underwriter from his liability for subsequent loss, and so forfeit the policy.(*p*) And the result will be the same whether the risk has or has not been enhanced by the delay or deviation.(*q*) Consequences of neglect.

A deviation will discharge the underwriter from his liability for any loss subsequent to the deviation, even although such subsequent loss is not in the remotest degree connected with the prior deviation, and even although the ship, after the deviation, may have returned in perfect safety to the direct course of the voyage, without having sustained the slightest injury in consequence of the departure from it, because the risk incurred has been varied from that which was insured.(*r*) But deviation does not, like unseaworthiness, discharge the underwriter from all liability on the policy from the commencement of the voyage. He still remains liable for all loss incurred prior to the deviation.(*s*) Underwriter discharged through loss unconnected with deviation, if subsequent thereto.

§ 181. In order that a departure from the ordinary course of the voyage should constitute a deviation, it must be a *voluntary* act or neglect of duty; a mere unavoidable interruption of the voyage is not a deviation. Thus it is not a deviation if the ship is driven from her course by a storm; or if she is taken possession of by a mutinous crew;(*t*) or if all the crew but two quit the ship and refuse to return, unless the master will sail out of the proper course of the voyage, and so compel him to deviate.(*u*) But deviation must be voluntary.

(*m*) Phillips on Ins. 979.

(*n*) *Hartley* v. *Buggin*, 3 Doug. 39.

(*o*) *Infra* §§ 208–215.

(*p*) Phillips, 1000, 1002; Arnould, § 143; Park Ins. 619; 3 Kent. Com. 315; *Wingate* v. *Foster*, 3 Q. B. D. 582.

(*q*) Arnould, § 143; per Lord Mansfield, *Hartley* v. *Buggin*, 3 Doug. 39; *African Merchants Co.* v. *British and Foreign, &c., Co.*, L. R. 8 Ex. 154. The law in this respect appears to be less strict in America; see Phillips, 983, 989.

(*r*) *Elliott* v. *Wilson*, 4 Brown's P. C. 470, *infra* § 188; *Clason* v. *Simmonds*, 6 T. R. 533; *Fox* v. *Black*; *Townson* v. *Guyon*, 2 Park Ins. 620; *African Merchants Co.* v. *British and Foreign, &c., Co., ubi sup.*; Phillips on Ins. 979; Arnould, § 143.

(*s*) Arnould, § 143, p. 395; *Green* v. *Young*, 2 Salk. 444; *Hare* v. *Travis*, 7 B. & Cr. 14.

(*t*) Phillips, 984: *Elton* v. *Brogden*, 2 Str. 1264.

(*u*) *Driscol* v. *Passmore*, 1 B. & P. 200; *Driscol* v. *Bovil*, *ibid.* 313.

What is voluntary deviation.

But if the deviation be voluntary, it will discharge the underwriters, even though it was owing to the ignorance of the master.(x) And where the master of a ship went out of harbour by the order of the captain of a frigate lying near, without remonstrating, and without force or threats being used to influence him, Lord Ellenborough decided that it was a deviation, saying that if the master had gone by compulsion, or under threat or fear of violence, the deviation would have been justified.(y)

What amounts to deviation. Mere intention does not.

§ 182. A mere intention to deviate from a voyage or risk once begun has no effect, until something is voluntarily done in pursuance of such intention, whereby the risk is actually changed.(z) Thus where a ship sailed with an intention to deviate by putting into an intermediate port, but before she turned off for that purpose, and while on a common course, she was overtaken by a storm, and driven into that very port, this was held not to be a deviation, nor to have any effect on the underwriter's liability.(a)

Removal from port to port.

If the ship was at a particular quay on a river, as at Liverpool, and merely removed to another quay of the same port, a mile or two off, that would not, it seems, be a deviation, if she was all the time in one port; but if she removes to a different town or place of habitation, which is itself a port of loading, then such removal is a deviation.(b) Thus, where a ship was insured "*at and from her port of lading in North America to Liverpool,*" and after loading goods in one creek of a bay, she went to another creek of the same bay, seven miles off, to take in the rest of her cargo, it was held to be a deviation, as the policy showed that the underwriter did not mean to run the risk of loading the ship at two such distant places, and as there was no evidence to show that the two places were considered by the mercantile world as forming parts of the same port.(c)

Where compelled to quit course, she must rejoin by most direct course;

§ 183. Where the ship is compelled by necessity to quit the course prescribed by the policy, she must pursue her voyage after such alteration by the most direct course and in the shortest practicable time, or the underwriters will be discharged. Thus in *Lavabre* v. *Wilson*,(d) *The Carnatic* was insured "*at and from Port l'Orient to Pondicherry, Madras and China, and at and from thence back to the ship's port or ports of discharge in France.*" On her arrival at Pondicherry she was found to be so much damaged that it was necessary for her to sail to *Bengal* (where otherwise

(x) *Phynn* v. *Royal, &c.*, 7 T. R. 505.
(y) *Phelps* v. *Auldjo*, 2 Camp. 350.
(z) Phillips on Ins. 1001; *Hare* v. *Travis*, 7 B. & C. 14; *Kewley* v. *Ryan*, 2 H. Bl. 343; *Thelluson* v. *Ferguson*, 1 Dougl. 361; *Foster* v. *Wilmer*, 2 Str. 1249; *Heselton* v. *Allnut*, 1 M. & Sel. 46.
(a) *Kingston* v. *Phelps*, cited 7 T. R. 165.
(b) *Brown* v. *Tayleur*, 4 A. & E. 241: per Patteson, J., at p. 249.
(c) *Brown* v. *Tayleur*, 4 A. & E. 241.
(d) 1 Dougl. 284.

she would have had no right under the policy to go), that being the only place where she could be properly repaired. The usual time in which the direct voyage from Pondicherry to Bengal was performed was about six or seven days, but the *Carnatic*, by touching and trading at intermediate ports, consumed six weeks in going to Bengal, and about two months in returning thence to Pondicherry. It was held that the delay in going from Pondicherry to Bengal, and the repeated stoppages by touching at different places and trading there, were deviations which discharged the underwriters.

If, however, a ship is driven out of her course, it is not necessary that she should retrace her route to the point of divergence from her original course, but she must prosecute her voyage by the safest and most direct course from the point to which she may have been so driven.(*e*) And so if a ship be driven out of her port of loading by stress of weather into another port, where she completes her cargo, and then does the best she can to get to her port of destination, it is not a deviation if she does not return to the port from which she was driven.(*f*)

but not necessarily at point of divergence.

Change or Abandonment of Voyage and its Effect on the Policy.

§ 184. Athough, as we have already seen, a mere intention to deviate has no effect on the policy, until something is done in pursuance of such intention, whereby the risk is actually changed; on the other hand, if the assured, either before or after the ship sails, abandon all thought of proceeding to the port of destination set down in the policy, from that moment a change of voyage takes place, and the underwriter is discharged from all loss happening after such determination has been finally formed, although such loss may occur before the ship has quitted the track of the insured voyage, or if the policy is "at and from," before she has sailed from the port where the risk was made to commence.(*g*) And so if all thought of the voyage is laid aside, and the ship is detained in port, the underwriter is discharged.(*h*)

Change or abandonment of voyage insured;

and its effect.

§ 185. There is a great distinction between the substitution of another entire voyage at the outset, and a change of the risk after the voyage is begun.(*i*) If the determination to change the voyage be arrived at before the commencement of the risk, the policy is void *ab initio*, and the risk never attaches.(*k*) If

At what point underwriter discharged.

(*e*) *Harrington* v. *Halkeld*, Park Ins. 639.

(*f*) *Delaney* v. *Stoddart*, 1 T. R. 22.

(*g*) Phillips on Ins. 1001, 990, 991; *Sellar* v. *Mc Vicar*, 4 Bos. & P. 23; *Woolridge* v. *Boydell*, 1 Dougl. 16; *Tasker* v. *Cunningham*, 1 Bligh 87; Arnould, § 144.

(*h*) Arnould, § 155; *Chitty* v. *Selwyn*, 2 Atk. 359.

(*i*) Phillips on Ins. 990.

(*k*) Phillips, 991. In such a case a stipulation that "deviation and (or) change of voyage" should "be held covered at a premium to be arranged," never comes into operation, *Simon* v. *Sedgwick*, (1893) 1 Q. B. 303; affg. 67 L. T. 352.

it be not arrived at till after the ship has sailed, the underwriter is discharged from all liability for losses which may accrue subsequently to its having been so arrived at, although such loss may take place while the ship is still on that part of her track which is common both to the voyage insured and to that which is substituted for it.(*l*)

If the ship is at the place "at" which the risk under the policy is to begin, but is fitting out or loading for another port of destination than that named in the policy, or if a ship insured "from" a place sails from such place for another port of destination, there being no intention to proceed to that named in the policy, where the course of the voyage to the two is the same for some distance, the voyage or risk actually begun is a different one from that insured, provided the intention of proceeding on such other voyage is so manifested by the assured or his agents that the underwriters can prove it.(*m*)

What amounts to change of voyage.

§ 186. It is sometimes very difficult to draw the line between a mere intention to deviate and an abandonment of the voyage insured.(*n*)

Mere clearing out for different port insufficient.

The mere fact of taking in goods and clearing for a port different from that to which the ship is insured, and for which she actually sails, does not amount to a change of voyage, for it is possible this may have been done with the intention of putting into such port in the way to the original terminus, and with the intention of ultimately carrying out the original adventure. In such case it would be a mere intention to deviate, and not a change of voyage.(*o*)

Shortening voyage.

A ship, if insured to several successive ports, may terminate the voyage at one of the nearer of them, and so shorten the voyage, without vitiating the policy.(*p*) Where, for example, the goods on a ship were insured "*at and from Liverpool to Palermo, Messina, Naples, and Leghorn,*" and the ship took in goods and cleared out for Naples only, it was held that there was no change of voyage.(*q*) But it seems that it is otherwise if, being insured to a single port, she sail with a fixed purpose not to go beyond a port which is nearer, and which is not contemplated in the policy.(*p*)

(*l*) Arnould, § 144.

(*m*) Phillips on Ins. 992; *Wooldridge* v. *Boydell*, 1 Dougl. 16; *Simon* v. *Sedgwick*, (1893) 1 Q. B. 303.

(*n*) Phillips on Ins. 1001; Arnould, § 144. For instances of abandonment of the voyage, see, in addition to the cases cited *supra* (notes *g*, *k*), *Bottomley* v. *Bovill*, 5 B. & Cr. 210; and *Way* v. *Modigliani*, 2 T. R. 30. See, however, Phillips, 992, and the American cases there cited as opposed to the last-mentioned decision.

(*o*) Phillips on Ins. 994; Arnould, § 144, p. 406; *Planche* v. *Fletcher*, 1 Dougl. 251.

(*p*) Arnould, § 146.

(*q*) *Marsden* v. *Reid*, 3 East, 572.

When the Ship may call at Intermediate Ports without Deviation.

When master may stop at intermediate ports.

§ 187. In cases where the termini only of the voyage insured are indicated by the policy, and the parties to the contract have done nothing else towards indicating its course, the sole guide in determining what that course should be is mercantile usage, and nothing can be considered a deviation which follows only the course that usage has sanctioned;(*r*) every underwriter being presumed to be acquainted with the practice of the trade which he insures.(*s*)

Usage to stop at intermediate ports.

Accordingly, where by the usage of trade it is customary in the course of the voyage insured to stop at intermediate ports, though out of the direct line, it is no deviation to stop there, though leave for that purpose is not expressly reserved in the policy; for such stopping is deemed to be in the regular course of the voyage insured, and therefore to have been contemplated by the parties to the policy. But for this purpose the usage must be precise, clear, and established.(*t*)

Thus, when all ships sailing through the sound in the regular course of their voyage touched at Elsinore to pay the sound dues and for convoy, it was held to be no deviation for a ship to stop there, although liberty so to stop was not reserved in the policy, so long as she was not delayed at Elsinore beyond what was necessary for such purposes.(*u*)

So, in the East Indian and Newfoundland trades, it has been often held that usage justifies the master and owners in delaying for purposes of trade or fishing, and in engaging in intermediate voyages, and that it is no deviation to do so, although the policy itself does not grant any liberty to do so.(*x*) Thus, where the policy was on fish at and from Newfoundland to a port in Portugal, and the ship, after unloading at Newfoundland, went to Sydney, in Novia Scotia, for a cargo of coals, it was held that this, being in accordance with usage, was no deviation.(*y*)

Insufficient evidence of usage.

But to constitute such a usage as will justify touching at intermediate ports not named in the policy, the usage or practice must have been sufficiently frequent to authorise the presumption that the parties to the policy had notice of it. Two instances of it, though in a not much frequented trade, would seem not to be enough.(*z*) For example, a stoppage at the Isle of Man, by a

(*r*) *Supra* § 175.

(*s*) Per Lord Mansfield, *Noble* v. *Kennoway*, 2 Doug. at p. 513.

(*t*) Phillips, 1003; Arnould, § 145; 1 Park Ins. 89 *et seq*; Marsh. Ins. 139; *Cormick* v. *Gladstone*, 11 East, 347.

(*u*) *Cormick* v. *Gladstone*, 11 East, 347.

(*x*) Arnould, § 145, p. 410; as to the East Indian trade, *Salvador* v. *Hopkins*, 3 Burr. 1707; *Gregory* v. *Christie*, 3 Dougl. 419; as to the Newfoundland trade, *Vallance* v. *Dewar*, 1 Camp. 503, 504; *infra* § 207; *Ougier* v. *Jennings*, 1 Camp. 505, note.

(*y*) *Ougier* v. *Jennings*, *ubi sup.*

(*z*) Phillips on Ins. 1003; *Martin* v *Delaware Co.*, 2 Wash. C. C. 254.

ship insured from Liverpool to the West Indies, was held not to be justified by proof that ships on that voyage occasionally, but not customarily, stopped there.(*a*)

Where policy directs course of voyage, usage inapplicable.

§ 188. Where, however, the policy of insurance itself, besides indicating the termini of the voyage, contains any directions as to the course which the ship shall take in sailing between them, such directions must be followed with the most scrupulous and literal exactness, and the slightest failure to comply with them will amount to a fatal deviation. And, where liberty was given in the policy to touch at one specified intermediate port, it has been held a deviation to put into any other than that named in the policy, even though calling at such other port was sanctioned by usage apart from the policy, and although neither the risk nor the premium would have been increased had such port been substituted for that named in the clause.(*b*)

Thus, it being usual for ships sailing from Carron for Hull to touch at different places for the purpose of taking in and delivering goods, and among others at Morrison's Haven, a merchant insured goods from "*Carron to Hull, with liberty to call at Leith.*" The ship on her voyage put into Morrison's Haven, and afterwards, without damage, got safe again into the direct course of the voyage from Carron to Hull, and was proceeding on such course, when she was wrecked with a total loss of the cargo. And it was held that putting into Morrison's Haven under this policy, which contained no liberty to do so, but, on the contrary, gave express permission to put into another named port, was a deviation, and discharged the underwriters from all further liability.(*c*)

In what order the Ship must visit Ports of Discharge, so as to avoid Deviation.

Successive ports specifically named.

§ 189. If the successive ports of discharge are specifically named in the policy, it will be a deviation if the ship does not visit such ports as she goes to in the precise order in which their names occur in the policy, whether that be the geographical order or not,(*d*) unless, indeed, long and uniform usage, not manifestly excluded by the tenor of the policy, have established a different order, in which case the latter may be observed.(*e*)

In *Beatson* v. *Haworth*,(*f*) a ship was insured "*at and from Fisherrow to Gottenburg and back to Leith and Cockenzie.*" The

(*a*) *Salisbury* v. *Townson*, 1 Burr. 341.
(*b*) Arnould, § 146; *Elliott* v. *Wilson*, 4 Brown's P. C. 470.
(*c*) *Elliott* v. *Wilson*, 4 Brown's P. C. 470.
(*d*) Arnould, § 146, p. 412; Phillips, 1010, 1012; *Beatson* v. *Haworth*, 6 T. R. 531; *Marsden* v. *Reid*, 3 East, 572; *Ashley* v. *Pratt*, per Pollock, C.B., 16 M. & W. at p. 482.
(*e*) *Beatson* v. *Haworth*, 6 T. R. 531.
(*f*) 6 T. R. 531; see, however, Phillips, 1012, as to this case.

latter port lies nearer to Gottenburg than Leith, and is about a mile and a half out of the direct course between the two. There appeared to be no settled course of trade as to the order of calling at the two places on such a voyage as the one insured. The ship first put into Cockenzie, and in coming out was stranded and lost. The putting first into Cockenzie was held to be a deviation, which discharged the underwriters.

Intermediate ports generally described, and subsequent ports named.

§ 190. Where the subsequent and ultimate ports of destination are specified, and the intermediate ones are comprehended in some general description, any of these may be visited, but they must be visited in an order having reference to progress towards the specified ulterior ports, unless the policy provides otherwise by allowing of voyages backwards and forwards.(*g*) This order is not necessarily governed by the geographical distance from the port of departure, or that of each successive port from the preceding, but will be affected by usage, and, especially in the West Indies and other tropical regions, by the prevailing winds and currents in different seasons, and also by the circumstances and incidents of the particular passage.(*h*)

Where ports are not named.

§ 191. If a ship is insured on a voyage to "ports of discharge" which are not specifically named in the policy, the rule is that the ship must visit such ports in the geographical order of their distance from the port of departure.(*i*) In *Clason* v. *Simmonds*,(*k*) a ship, insured on a voyage "*from London to her ports of discharge within the Straits* (of Gibraltar) *as high as Messina*," sailed on her voyage with a freight for Marseilles, but with instructions to go also to Genoa, Leghorn, and Naples, and on arriving off Marseilles, her first port of discharge in geographical order, as she was prevented by contrary winds from putting in there, proceeded first to Genoa and then to Leghorn, from which latter place she was making her way back to Marseilles, when she was captured. It was held by Lee, C.J., that by proceeding to Genoa before stopping at Marseilles (her first port of discharge) she acted contrary to the terms of the policy; and the jury found that the returning from Leghorn determined the insurance there, and discharged the underwriters from the subsequent loss.

Not necessary to sail to all ports named in the policy.

§ 192. If several successive ports of discharge are specifically named in the policy, it is not necessary that the ship should sail to *all* the ports so named. She may omit any, or sail only to one; the sole limitation being that, if she visits more than one, she must take them in the order in which their names occur in

(*g*) Phillips on Ins. 1013; *Gairdner* v. *Senhouse*, 3 Taunt. 16.

(*h*) Phillips on Ins. 1013; and see *Bragg* v. *Anderson*, 4 Taunt, 229.

(*i*) Arnould, § 146, p. 413; Phillips on Ins. 1010.

(*k*) 6 T. R. 533, n.

the policy, unless there be a different usage which is not excluded by the language of the policy.(*l*)

Thus, where goods were insured "*from Liverpool to Palermo, Messina, and Naples*," and the ship cleared and sailed for Naples, it was held that the true construction of the insurance was that a voyage to those three places meant a voyage to either of them or to any of them in their order, and that the assured might drop any of the places named, but that, if he went to more than one, he must take them in the order named in the policy.(*m*)

In certain cases master may sail backwards and forwards from port to port without deviation.

§ 193. Generally speaking, it is a deviation for a ship, after having once touched at one of several ports, to revisit it, or to sail backwards and forwards from one to the other, unless express liberty for that purpose be inserted in the policy;(*n*) or unless it appear by the terms of the policy that the purposes of the voyage, as described, necessarily require such a liberty for duly carrying them into effect.(*o*) But insurance generally "*to a market*," or for the purpose of obtaining or loading a cargo, or trading, in a certain mentioned region, authorises passages backwards and forwards for the purposes of the voyage, regard being had to the prevailing winds and currents as to the order of touching at ports, and such a policy covers the risk to the same port more than once.(*p*)

Thus it has been held in the United States, that a ship, insured on a West India voyage *to St. Thomas and a market in the West Indies*, was justified in seeking a market at the different islands, without regard to their geographical order, and even in touching at the same port once and again, if it were with the *bonâ fide* intention of finding a market, but that the ports were not to be taken in such order, in respect of currents and winds and seasons, as to prolong the risk unnecessarily.(*q*)

Effect of Licence Clauses in Excusing Deviation.

Licence clauses:

§ 194. There are sometimes special clauses in the policy, by which liberty is given to the ship "*to call*," or "*to touch*," or "*to touch and stay*," or "*to touch, stay, and trade*," either at certain specified ports, or "*at all ports whatsoever, for all purposes whatsoever*," &c.

their construction.

The extent of the licence, which is conferred by these words, depends upon the nature and extent of the risk, which the parties

(*l*) Arnould, § 146, p. 413; Phillips, 1010.

(*m*) *Marsden* v. *Reid*, 3 East, 572.

(*n*) Arnould, § 146, p. 414; *Gairdner* v. *Senhouse*, 3 Taunt. 16.

(*o*) *Mellish* v. *Andrews*, 2 M. & Sel. 27; 5 Taunt. 496 (Ex. Ch.).

(*p*) Phillips on Ins. 1014; *Armett* v. *Innes*, 4 J. B. Moore, 150; *Ashley* v. *Pratt*, 16 M. & W. 471; 1 Ex. 257.

(*q*) *Deblois* v. *Ocean Ins. Co.*, 16 Pick. 303; Phillips, 1014.

to the policy contemplated and agreed to undertake, and the nature and extent of such risk are to be collected from the contents of the policy itself. The construction of the licence clauses must be governed by the character of the voyage, described in the policy, and the fair and reasonable meaning of its provisions, and if the purpose is expressed, the construction is to be liberal in reference to such purpose.(*r*) In case of a change of the voyage before its commencement, the licence clauses, however wide, as we have seen, never attach.(*s*)

In general liberal.

Where a ship was insured "*at and from Pernambuco or any other port or ports in the Brazils to London*," "*with liberty in that voyage to proceed and sail to and touch and stay at any port or places whatsoever, and to call, take in, deliver, or exchange goods at any place*," and after touching at Pernambuco, and finding no cargo there, she sought it at S. Salvador, another port in the Brazils, 500 miles to the south of Pernambuco, and consequently the same distance out of the direct course to London, it was held no deviation.(*t*)

What ports he may visit under the licence clauses.

So, where a ship was insured, "*at and from Liverpool to ports and places in China and Manilla, all or any, during the ship's stay there, for any purposes, and from thence to her port or ports of calling and discharge in the United Kingdom, with liberty to call and stay at all or any ports or places on either side of and at the Cape of Good Hope.*" She sailed for the coast of China, discharged part of her outward cargo at the Chinese port of Tonghoo, and proceeded to Manilla, where she discharged the residue. At Manilla, the captain, finding freights low, took on board only part of a cargo and sailed back for Tonghoo, in order to complete his homeward cargo. On this passage the ship was lost. This was held to be no deviation.(*u*)

§ 195. But, unless it appears manifest upon the true construction of the policy, that the parties had a different meaning, it may be taken as a general rule, that a liberty to touch and stay, though couched in very extensive terms, can only confer a power of visiting such ports as lie in the usual and direct course between the termini of the voyage insured. However extensive the language of licence clauses may be, they can never confer a power of visiting ports out of what, upon a fair construction of the whole policy, appears to have been the course of the voyage contemplated and insured by the parties; nor can they justify the ship in visit-

Only such as lie in usual and direct course.

(*r*) Phillips, 1005; Arnould, § 147; *Rucker* v. *Allnutt*, 15 East, 278; and see *infra* § 196.

(*s*) *Simon* v. *Sedgwick*, (1893) 1 Q. B. 303; affg. 67 L. T. 352; § 185, *supra* (note *k*).

(*t*) *Lambert* v. *Liddard*, 5 Taunt. 480; and see *Bragg* v. *Anderson*, 4 Taunt. 229.

(*u*) *Ashley* v. *Pratt*, 16 M. & W, 471; in error, 1 Ex. 257; cp. *Harrower* v. *Hutchinson*, L. R. 4 Q. B. 523; 5 Q. B. 584.

ing any port, even though within the local limits of the voyage insured, for any purpose which is not connected with the main object of the adventure.(*x*)

Examples.

In *Lavabre* v. *Wilson*,(*y*) a ship was insured on an East Indian voyage, "at and from Port l'Orient to Pondicherry, Madras, and China, and at and from thence back to the ship's port or ports of discharge in France, *with liberty to touch in the outward or homeward-bound voyage at the Isles of France and Bourbon, and at all or any other place or places what or wheresoever;*" and with a stipulation that "*it shall be lawful for the said ship in this voyage to proceed and sail to, and touch and stay at, any ports or places whatsoever, as well on this side as on the other side of the Cape of Good Hope, without being deemed a deviation.*" Lord Mansfield said, that it was his clear opinion that the general words were so qualified and restrained by the expressions "*in the outward and homeward-bound voyage*" and "*in this voyage,*" as to mean "all places whatsoever in the usual course of the voyage to and from the places mentioned in the policy."

And, where a ship was insured "*at and from Africa to the Canaries, Madeira, and Lisbon, with liberty to touch, stay, and trade at all ports, &c., in the voyage,*" it was held, that after she had once moored at anchor for twenty-four hours, in a port in Africa, so as to give an inception to the risk, she could not then proceed to the southward, but only northwards towards Europe, the object being only to protect deviations in the direct course of the voyage insured.(*a*)

In *Bottomley* v. *Bovill*,(*b*) a ship was insured "*at and from London to New South Wales, and at and from thence to all ports and places in the East Indies or South America,*" with liberty "*to proceed and sail to, touch and stay at, any ports or places whatsoever, &c., for all purposes whatsoever, particularly to trade and sail backwards and forwards and forwards and backwards.*" The ship sailed from London with convicts for New South Wales, and from thence to New Zealand on an engagement for a voyage to New Zealand and back to New South Wales. On her way back to New South Wales she was lost. It was held, that notwithstanding the extensive terms of the policy, the sailing to New Zealand was a deviation, as New Zealand lay entirely out of the course of the voyage from New South Wales either to the East Indies or to

(*x*) Arnould, § 148; Phillips, 1007; *Langhorn* v. *Allnutt*, 4 Taunt. 511; *Hammond* v. *Reid*, 4 B. & A. 72; *Solly* v. *Whitmore*, 5 B. & A. 45; cp. *Leduc* v. *Ward*, 20 Q. B. D. 475, § 233 *supra*; *Margetson* v. *Glynn*, (1892) 1 Q. B. 337; W. N. (1893), p. 76, H. L.

(*y*) 1 Dougl. 284, 286.

(*a*) *Ranken* v. *Reeve*, 2 Park's Ins. 627; cp. *Hogg* v. *Horner*, *ib.* 626, as to which see Arnould, § 148, note (*l*), citing *Ashley* v. *Pratt*, 16 M. & W. 471; 1 Ex. 257.

(*b*) 5 B. & Cr. 210; and see *Gairdner* v. *Senhouse*, 3 Taunt. 16.

South America, and the voyage thither was not connected with either of the voyages contemplated by the parties.

When he may visit under the licence clauses ports out of the course of his voyage.

§ 196. But where it plainly appears, upon the true construction of the whole policy, that the parties could not have intended to give this limited effect to these clauses, they will be construed to confer a power of visiting any ports within the scope of the policy, although such ports lie wide of the usual and direct course between the termini of the voyage, and even in a diametrically opposite direction; provided only, that they be visited for a purpose connected with the prosecution of the adventure which is contemplated by the policy.(*c*)

Where a ship was insured "*at and from Antigua to England, with liberty to touch at all or any of the West Indian Islands, Jamaica included,*" and in order to complete her homeward cargo, she put into St. Kitt's, which lay out of the direct course of the voyage from Antigua to England, it was held, that it was not a deviation, but that she might under the policy touch at any of the West India Islands, although not in the direct course from Antigua to England, and stay at such as she visited the time necessary to take in goods to complete her homeward cargo."(*d*)

And where a ship was insured "*at and from London to the ship's discharging port or ports in the Baltic, with liberty to touch at any port or ports for orders or any other purpose,*" and the ship having touched at Carlsham in Sweden for orders, and having gone on to Swinnemunde, a more distant port, for further orders, and having received orders at Swinnemunde, as it was unsafe to load at Swinnemunde, to return to Carlsham and there wait for orders: it was held that the ship might so return to Carlsham without being guilty of a deviation, it having been found that she went to Swinnemunde for orders in prosecution of her voyage, and returned to Carlsham to obtain further orders as to the further prosecution of the same voyage.(*e*) And in the Exchequer Chamber the Court said, that under a policy worded as this was, the assured had a right to go backwards and forwards from port to port for orders as to his port of discharge, until his port of discharge was fixed.(*f*)

So in *Hunter* v. *Leathley*,(*g*) goods were insured upon a voyage "*at and from Singapore, Penang, Malacca, and Batavia, all or any, to the ship's port or ports of discharge in Great Britain or Holland,*"

(*c*) Arnould, § 149; *Bragg* v. *Anderson*, 4 Taunt. 229; *Lambert* v. *Liddard*, 5 Taunt. 480; *Metcalfe* v. *Parry*, 4 Camp. 123; *Mellish* v. *Andrews*, 2 M. & S. 27; 5 Taunt. 496; *Hunter* v. *Leathley*, 10 B. & C. 858; 7 Bing. 517; *Bize* v. *Fletcher*, 1 Dougl. 284, 288.

(*d*) *Metcalfe* v. *Parry*, 4 Camp. 123.

(*e*) *Mellish* v. *Andrews*, 2 M. & S. 27; 5 Taunt. 496.

(*f*) Per Gibbs, C.J., 5 Taunt. 503.

(*g*) 10 B. & C. 858; 7 Bing. 517 cp. *Armett* v. *Innes*, 4 J. B. Moore, 150; *Barclay* v. *Stirling*, 5 M. & S. 6.

What ports he may visit under the licence clauses. Examples.

&c., with leave "to touch, stay, and trade at all or any ports and places whatsoever, and wheresoever, in the East Indies, Persia, or elsewhere," and also with permission "*to touch and stay at any ports or places whatsoever, and wheresoever, in any direction, and for any purpose necessary or otherwise, particularly Singapore, Penang, Malacca, Batavia, the Cape of Good Hope, and St. Helena, with leave to take on board, discharge, reload, or exchange goods and passengers, without being deemed a deviation.*" The ship took in part of her cargo at Batavia, and then proceeded to Sourabaya (another port in Java, 400 miles to the eastward of Batavia, and directly out of the course from Batavia, or any other of the four ports mentioned in the policy, to Europe), and at Sourabaya took on board the remainder of her cargo, and returned with it to Batavia, whence she sailed for Europe. She was afterwards lost by perils of the seas. It was held, that the putting into Sourabaya for the purpose of completing her cargo was no deviation.

When liberty general,

purpose of visiting port must be within scope of adventure.

§ 197. A general liberty to touch at a port or ports, without specifying them, will justify touching only for the purposes of the voyage.(*h*) Though a port is within the terms of the policy, if the purpose for which it is visited is not within the scope of the adventure contemplated by the policy, visiting it will amount to a deviation. Indeed, however extensive the language may be, the permission to stay, even if it be "*for any purpose whatever,*" always means for some purpose within the scope of the adventure. The liberty in the policy must always be construed with reference to the main scope of the voyage insured.(*i*)

In *Williams* v. *Shee* (*k*) goods were insured "*at and from London to Berbice, with liberty to touch and stay at any ports and places whatsoever and wheresoever, and for all purposes whatsoever, particularly to land, load, and exchange goods, without being deemed a deviation.*" The ship, which had sailed with convoy, put in to Madeira for the purpose of unloading goods and taking on board wines, and there delayed, for that purpose, till after the convoy had proceeded on the voyage. This was held to be a deviation, notwithstanding the extensive liberty given by the policy, because she had stayed behind for the purposes of trade when the rest of the fleet had sailed away in the prosecution of the voyage, a proceeding which was not within the main scope of the voyage insured.

And so in *Solly* v. *Whitmore* (*l*) a ship was insured on an outward voyage, "*at and from Hull to her port or ports of loading in*

(*h*) Phillips on Ins. 1007.

(*i*) Arnould, § 150; per Gibbs, J., *Langhorn* v. *Allnutt*, 4 Taunt. 519; per Lord Ellenborough, *Williams* v. *Shee*, 3 Camp. 469, 471.

(*k*) *Ubi sup.*, see also *Clason* v. *Simmonds*, 6 T. R. 533, n.

(*l*) 5 B. & A. 45; and see *Hammond* v. *Reid*, 4 B. & A. 72. The correctness of the decision in *Solly* v. *Whitmore*, though not the principle on which it is founded, is doubted by Phillips: Ins. 1007.

the Baltic Sea and Gulf of Finland, with liberty for the ship in the said voyage to proceed and sail to, and to touch and stay at any ports or places whatsoever and wheresoever, for all purposes, particularly at Elsinore, without being deemed a deviation." The ship's intended port of loading was Pillau. Before sailing, she took goods on board for Elsinore and Dantzic, and on her voyage she stopped at both these places in order to deliver those goods, and was afterwards lost before reaching Pillau. It was held, that the stopping to deliver goods, being a purpose wholly foreign to the main object of the voyage insured, which was a voyage to a loading port, was a deviation.

Purpose of visiting port must be within scope of adventure.

In *Hamilton* v. *Sheddon*(*m*) an insurance was effected on goods on board a ship, which, as appeared by a memorandum on the policy, was meant to act as a tender to other ships employed in the palm-oil trade on the African coast, with leave "*to call at all ports and places, backwards and forwards, and forwards and backwards, for any purpose, without being deemed any deviation; and . . . . to proceed and sail to and touch and stay at any ports or places whatsoever, and to load, unload, &c.*" The ship sailed from the Benin river (where she had been for some time acting as a tender) to Cameroones, with the cargo of one of the oil-ships which had gone ashore at the bar of the Benin river. This was held to be a deviation, although the policy contained the most extensive liberty to touch and stay, as it was not acting as a tender within the meaning of the policy.

§ 198. If the ship visits an allowed port for an allowed purpose, no *trading, breaking bulk, landing, or loading cargo*, however alien to the main object of the adventure, is a deviation, if it be completed during the period of the ship's lawful stay in such port, so as neither to cause any additional delay, or any substantial variation of the risk.(*n*)

Licence to touch in certain cases held to give liberty to trade.

And further, whenever it appears on the face of the policy to have been clearly contemplated by the parties, or necessary to the purposes of the voyage insured, that the ship should *trade*, where she has a liberty merely to *touch*, her trading there will not be deemed a deviation.(*o*) Thus where a ship was insured "*at and from Madeira to Santos, with liberty to touch at the Cape de Verde Islands*," and it appeared from a letter shown to the underwriters before the policy was effected, that the parties intended the ship *to take in salt* at one of the Cape de Verde Islands, she was held entitled to do so, under the mere liberty "*to touch*" there.(*p*)

Extent licence.

(*m*) 3 M. & W. 49.

(*n*) Arnould, § 152; Phillips, 999; *Raine* v. *Bell*, 9 East, 195; *Cormick* v. *Gladstone*, 11 East, 347; cp. *Laroche* v. *Oswin*, 12 East, 131.

(*o*) Arnould, § 152; Phillips, 1005.

(*p*) *Urquhart* v. *Bernard*, 1 Taunt. 450; and see *Metcalfe* v. *Parry*, 4 Camp. 123, *supra* § 196.

Liberty to seek convoy, &c.

§ 199. Under liberty "*to seek and join convoy*," the ship may, if necessary, go out of the usual course to join it.(*q*) And it has been held by the Supreme Court of the United States that leave to stop at Matanzas to inquire if there were any men-of-war off Havana, would permit remaining there "so long as the danger continued."(*r*)

When trading at port within the licence clauses is a deviation.

If it occasion delay or variation of risk.

§ 200. But although, if the ship is in a port which she was justified in visiting, it does not discharge the insurers for her to trade there, though in a manner foreign to the main purpose of the adventure, if no delay or enhancement or variation of the risk is occasioned thereby;(*s*) still, any additional delay caused by the trading will, in all such cases, amount to deviation. An act of trading not contemplated by the parties to the policy, and unconnected with the main object of the adventure, is justifiable only on condition that it be completed during the period of the ship's lawful stay at an allowed port for a justifiable purpose; and any delay caused by it beyond the time *bonâ fide* necessary for accomplishing the legitimate purpose for which the ship visited the port, is a deviation. And even if the delay be partly for a purpose connected with the main objects of the voyage insured, but partly also for a purpose which is foreign to those objects, it is a deviation.(*t*)

Thus, in *Inglis* v. *Vaux*,(*u*) a ship was insured at and from Liverpool to Martinique, and all or any of the Windward and Leeward Islands, "*with liberty to touch at any ports or places whatsoever, to take on board and land goods, stores, &c.*" She landed the greatest part of her cargo at Martinique, and sailed with the residue to Antigua, where she arrived on the 31st of May. She lay there till the 8th July, trying, but in vain, to dispose of the outward cargo, and to procure a homeward cargo. It was held, that the underwriters were discharged when the disposal of the outward cargo ceased to be the sole reason for the vessel's stay at Antigua.

But it is otherwise where the delay, though primarily connected with an earlier voyage, is also in necessary preparation for the voyage insured. Thus in *Warre* v. *Miller*, (*x*) the insurance was on freight upon a ship "*at and from Grenada to London.*" It was proved that there was only one Custom House for the whole island of Grenada, that the ship arrived in safety at Grenada, and discharged part of her outward cargo at three

(*q*) Phillips on Ins. 1005; *Heselton* v. *Allnutt*, 1 M. & Sel. 46, 50.

(*r*) *Hughes* v. *Union Co.*, 3 Wheat. 159.

(*s*) *Supra* § 198.

(*t*) Arnould, § 153; *Inglis* v. *Vaux*, 3 Camp. 437; *Williams* v. *Shee*, *ib.* 469.

(*u*) 3 Camp. 437; see this case commented on by Bayley, J., *Warre* v. *Miller*, 4 B. & C. at p. 546.

(*x*) 4 B. & Cr. 538, affirming 1 C. & P. 237.

different bays, and that she was proceeding to a fourth to discharge the residue, and take in part of her homeward cargo, when she was lost by perils of the seas. It was held, that the delivery of the outward cargo was a necessary preparation for the homeward voyage, that she was therefore proceeding to this fourth bay for a purpose connected with the voyage insured, and that therefore it was no deviation, and that the underwriter was liable.

Deviation by Cruising, Chasing, or Attacking.

When cruising is a deviation.

§ 201. If a ship, on a mere mercantile adventure, cruises, that is, lies by, or departs from the direct course of the voyage, in hope of meeting with prizes, that is a deviation.(*y*) But the mere fact of carrying letters of marque without the knowledge of the underwriters does not vitiate the policy.(*z*) And it seems that no departure from the usual course of the voyage, occasioned by repelling hostile force, or even by attacking an enemy's ship, is a deviation, provided it be fairly attributable to motives of self-defence, although if such departure were caused by the desire of profit from the capture of prizes, it would be a deviation.(*a*)

In *Parr* v. *Anderson*,(*b*) the policy contained the words "*declared with or without letters of marque.*" Lord Ellenborough expressed the opinion that in the case of a mercantile adventure no deviation from the ordinary course of the voyage for the purpose of pursuing, for the chance of prize, ships, which at the time of instituting such pursuit were not even known to belong to an enemy, would be justified by those words. And the ship having in that case altered her course about a quarter of a point, and chased a Spaniard for about a quarter of an hour, the jury, under his Lordship's direction, found a verdict for the defendants, the underwriters. This verdict was set aside, and a new trial ordered for the purpose of ascertaining whether the words in question had obtained in use and practice any known and definite import. The second trial also resulted in favour of the defendants, but on other grounds.(*c*)

Ship warranted armed may defend herself and chase.

§ 202. In an insurance on goods upon a ship carrying letters of marque, though without liberty to do so, and warranted to proceed on a certain voyage with 60 men and 22 guns and 18 and 6-pound shot, it seems to have been admitted that if an enemy comes in her way, the ship may in her own defence defend

(*y*) Arnould, § 158; *Cock* v. *Townson*, 2 Park, Ins. 630; *Jolly* v. *Walker*, *ib.* As to what constitutes cruising, see *Syers* v. *Bridge*, 2 Dougl. 527.

(*z*) Arnould, § 158; Phillips, 1029; per Lord Ellenborough, C.J., *Jarratt* v. *Ward*, 1 Camp. at p. 266; *Moss* v. *Byrom*, 6 T. R. 379.

(*a*) Arnould, § 158; Phillips on Ins., 1030.

(*b*) 6 East, 202, 205.

(*c*) For the later history of the case, see 2 Park on Ins. 632.

When cruising, &c., is a deviation.

or engage the enemy, and prosecute the engagement to capture, and that she might even chase the enemy without deviation, even although in so doing she might be obliged to depart from the direct course of the voyage; but that she could not cruise for hostile purposes without deviation.(*d*)

"Leave to chase," &c., receives limited construction.

§ 203. If the policy contain the words, "*with leave to chase, capture, and man prizes,*" these words cannot be extended beyond what is necessary for the performance of these acts, and do not justify the ship convoying her prize into port; nor waiting for and convoying prize; nor shortening sail and laying to in order to let the prize keep up with her.(*e*)

And so where the policy on a fishing voyage contained the words, "*with or without letters of marque, and with liberty to chase, capture, and man any prize,*" it was held, that they did not authorise the ship laying nine days off a port, waiting for the enemy's ship to come out, when she would have completed her cargo, even although the insured ship was within the limits of her fishing-ground while she was so lying in wait.(*f*)

When Delay in Commencing or Prosecuting the Voyage is equivalent to Deviation.

When delay amounts to a deviation.

§ 204. Any unusual and extraordinary delay in the commencement or prosecution of the voyage insured, and any unusual and extraordinary prolongation of its duration, without necessity or just cause, after the risk which was undertaken by the underwriters has once commenced, alters the risk, amounts to a deviation, and discharges the underwriters;(*g*) or, to state the rule in other words, every delay which exceeds a reasonable time, or is incurred for purposes unconnected with the true object of the voyage insured, is a deviation.(*h*) The good sense of this rule is manifest when it is remembered that delay causes the voyage to be undertaken at another period of the year, and in some cases at a more advanced age of the ship, than those which were contemplated by the underwriter when he undertook the risk.(*i*) So where a ship was insured at and from the coast of Africa to the West Indies, with liberty to exchange goods and slaves, it was held that converting the ship into a "factory ship," or floating warehouse, for

(*d*) *Jolly* v. *Walker*, 2 Park Ins. 630. See this case discussed by Lord Ellenborough in *Parr* v. *Anderson*, 6 East, 202; and see per Story, J., *Haven* v. *Holland*, 2 Mason, 230, 233.

(*e*) *Lawrence* v. *Sydebotham*, 6 East. 52.

(*f*) *Hibbert* v. *Halliday*, 2 Taunt. 428; see also *Jarratt* v. *Ward*, 1 Camp. 263.

(*g*) Phillips on Ins. 1002; *Hartley* v. *Buggin*, 3 Doug. 39; *Mount* v. *Larkins*, 8 Bing. 108.

(*h*) Arnould, § 155. As to the effect of delay on the contract of carriage, see *supra* §§ 141 *et seq.*, § 178.

(*i*) Per Tindal, C.J., 8 Bing. at p. 122.

receiving slaves on the coast of Africa to be forwarded by other ships, was a deviation.(*k*) If, however, the delay is necessary to accomplish the objects of the voyage, and according to the usual course of the trade, and *bonâ fide*, it will not avoid the policy.(*l*) Where goods are insured until landed, any unreasonable delay in landing them has the effect of a deviation, if not justified by the usage of the trade, or by necessity.(*m*)

When delay amounts to a deviation.

If a particular period is allowed by the policy for delay at a place, voluntarily to remain longer there is a deviation, as where the policy allowed of a delay of two months at Monte Video, and the ship remained there longer for the blockade of Monte Video to be raised.(*n*)

Voluntarily exceeding allowed period.

§ 205. If the policy is "at and form" a port, then and as long as the ship is *bonâ fide* preparing for her voyage, by repairs or the like, at the port at which the policy attaches, the delay is excusable, and the underwriter continues liable; but any waste of time, or unnecessary delay there, if not excused by justifying causes, nor in any degree consistent with the purposes of the voyage insured, varies the risk and discharges the underwriter; as where a yacht lying in Bristol harbour was insured on a voyage "at and from Bristol to London," and did not sail for five months after the policy was effected.(*o*)

Policy "at and from": Delay for necessary preparation allowed, but no more.

So, if a ship, while on her outward voyage, is insured "at and from" a port for the voyage home, it is implied, either that the ship is at such port at the time of effecting the policy or that she will be there shortly. If, therefore, owing to some unreasonable delay in the course of performing her outward voyage, the ship is prevented from arriving at the port, "at and from" which she is insured for her homeward voyage, until an unreasonably long time after the signing of the policy, such delay will discharge the underwriter, unless it is excused by some justifying cause.(*p*)

§ 206. It is, however, only an unreasonable or inexcusable delay, amounting to a wilful and unnecessary waste of time, which will be equivalent to a deviation. If the delay is involuntary or justified by necessity, and particularly if it be according to the usual course of trade, the underwriter will not be discharged, even although it may be considerable.(*r*) "Detention for a reasonable time for the purposes of the adventure must be allowed, and whether the time is reasonable or not must be determined,

When delay does not amount to deviation.

For the purposes of the adventure.

(*k*) *Hartley* v. *Buggin*, 3 Dougl. 39. See also *Hamilton* v. *Sheddon*, 3 M. & W. 49, cited *supra* § 197.

(*l*) Phillips, 1002; *Noble* v. *Kennoway*, 2 Doug. 510; *Vallance* v. *Dewar*, 1 Camp. 503.

(*m*) Phillips, 998; *Parkinson* v. *Collier*, 2 Park Ins. 653.

(*n*) *Doyle* v. *Powell*, 4 B. & Ad. 267.

(*o*) Arnould, § 155; *Palmer* v. *Marshall*, 8 Bing, 79, 317; *Palmer* v. *Fenning*, 9 Bing. 460.

(*p*) *Mount* v. *Larkins*, 8 Bing. 108.

(*r*) Phillips, 1002; *Phillips* v. *Irving*, 7 M. & Gr. 325; *Vallance* v. *Dewar*, 1 Camp. 503.

Delay for purposes of adventure is no deviation.

not by any positive or arbitrary rule, but by the state of things existing in the port where the vessel happens to be."(s) A ship insured to a "port of discharge" in an extensive district or country, may delay a reasonable time, on her arriving in the country, for instructions to what port of discharge to proceed.(t) Whether in a particular case the delay is reasonable is a question for the jury.(u)

In *Smith* v. *Surridge*,(x) a ship insured on the 15th of May, on a homeward voyage, "*at and from Pillau to London*," was at Pillau at the date of the policy and was obliged to undergo thorough repairs there before sailing on the voyage insured. These were not completed till the end of June, when the water in the harbour had become so low that she could not get over the bar, and for that reason did not actually sail till November. It was held that this was not such a delay as to discharge the underwriter.

So, in *Schroder* v. *Thompson*,(y) a ship was insured from London to the ship's loading ports in Virginia and back to London. She was chartered to proceed in ballast, calling at St. Ube's for a cargo of salt, for Norfolk in Virginia, and there load a cargo of timber and therewith proceed to London. She arrived at Norfolk during an embargo, under which she might have discharged her cargo and returned in ballast. But she remained there eighteen months till the embargo was raised, and then shipped her homeward cargo and was lost. It was held, that the underwriters were still liable, as the delay was justifiable.

Again, in *Phillips* v. *Irving*, a seeking ship was insured on a trading voyage "*at and from London to Bombay and thence to China and back to the United Kingdom*," and owing to the state of the freight market and other difficulties she stayed at Bombay for more than six months after she was ready to take in cargo there, for the purpose of procuring a remunerative freight. It was held, that such delay was no deviation, inasmuch as it was not unreasonable, having regard to the circumstances of the case.(z)

Usage.

§ 207. Delay when justified by usage does not amount to a deviation. Where, for example, the policy was on ship from Waterford to a port or ports of discharge on the coast of Labrador, with leave to touch at Newfoundland, and on cargo, and also upon the ship till she should be arrived at her port of

(s) Per Tindal, C.J., 7 M. & Gr. p. 328; Arnould, § 156.
(t) Phillips on Ins. 1002.
(u) *Bain* v. *Case*, 3 C. & P. 496.
(x) 4 Esp. 25; cp. *Grant* v. *King*, *ib.* 174.
(y) 5 Taunt. 463.
(z) 7 M. & Gr. 325; see also Phillips on Ins. 1002, for the American decisions, in which the same principle is acted upon.

discharge, and should have moored at anchor twenty-four hours, and on the cargo until the same should be there discharged and safely landed, a delay of three weeks on the coast of Labrador was held to be justified by usage.(*a*) And so, in the case of an insurance at and from any port or ports in Newfoundland to one port of discharge in Portugal, it was held that a delay on the ship's arrival at Newfoundland, for the purpose of fishing, was justified by usage.(*b*)

Delay justified by usage.

Delay or Departure from Direct Course excused by Necessity, &c.

§ 208. If the departure from the course of the voyage is necessitated by moral or physical force it is no deviation: as where the crew of a ship carrying a letter of marque mutinously insisted on the master's returning home with a prize he had taken, instead of proceeding on the voyage, and on his remonstrating forced him to submit;(*c*) and where a neutral ship was carried out of her course by a British cruiser, and detained in a port far out of the limits of the policy for six weeks, it was held to be no deviation.(*d*)

Moral or physical force.

So, where a crew, dreading the attacks of pirates, all left the ship and refused to return to her, unless the master would promise immediately to sail back to the home port, his returning thither in pursuance of a promise given to the crew under such circumstances was held not to be a deviation.(*e*)

But it must be shown that a degree of force was exercised towards the master which either physically he could not resist, or morally, as a good subject, he ought not to resist. Therefore, where the master of a merchant ship, while he lay at a port in Iceland, taking in his cargo, was ordered by a captain of a King's ship to go out to sea and examine a strange sail in the offing bearing enemy's colours, and he did so, without remonstrance, and without any threat of force, his so doing was held a deviation.(*f*)

§ 209. When, in consequence of disaster, the ship cannot safely pursue her voyage, the master is not only justified, in the interest of all concerned, in quitting the course and seeking the most convenient and suitable port for repairs and supplies, but he would be guilty of a grave neglect of duty if he omitted to do so.(*g*)

Making port to refit.

Going into a port out of the usual course of the voyage for necessary repairs, and the staying there until they are completed,

(*a*) *Noble* v. *Kennoway*, 2 Doug. 510.
(*b*) *Vallance* v. *Dewar*, 1 Camp. 503; Phillips, 1003.
(*c*) *Elton* v. *Brogden*, 2 Str. 1264.
(*d*) *Scott v. Thompson*, 1 N. R. 181.
(*e*) *Driscol* v. *Bovill*, 1 B. & P. 313.
(*f*) *Phelps* v. *Auldjo*, 2 Camp. 350.
(*g*) Phillips on Ins. 1019; see per Lord Mansfield, *Pelly* v. *Royal, &c., Co.*, 1 Burr. 341, 352; *Motteux* v. *London, &c. Co.*, 1 Atk. Ch. 545, 547; per Lord Blackburn, *Svendsen* v. *Wallace*, 10 Ap. Ca. at pp. 411, 412; and see *The Rona*, 51 L. T. N. S. 28.

Making a port to refit.

is not a deviation; provided that it is clear that such repairs, under the circumstances and at such port, were reasonably necessary, and that the delay was not longer than was necessary for repairs to enable the ship to proceed on her voyage.(*h*) And if the ship does not find the necessary repairs and supplies at the first port of necessity, it may proceed to a second, without deviation.(*i*)

In determining what port is convenient and suitable, the master must have regard to the interests of all concerned, cargo-owners and shipowners alike, though he is not bound to consult the cargo-owners. He is not bound to go to the nearest port at which the requisite repairs and supplies can be obtained, if he *bonâ fide* considers, in the interests of all concerned, that a further one is more advantageous.(*k*) Subject to this, such digressions must be prosecuted, and the main voyage resumed, without any deviation or delay beyond what is necessary, or there will be a fatal deviation.(*l*) By the term "necessary is meant reasonably necessary, and, in considering what is reasonably necessary, every material circumstance must be taken into account—*e.g.* danger, distance, accommodation, expense, time, and so forth."(*m*)

Where a master, finding he had too little ballast, at the importunity of the crew, and to save his and their lives, put into a port out of the course and took in 500 rolls of tobacco as ballast, it was held to be no deviation.(*n*)

Making port to recruit disabled crew, or to procure stores.

§ 210. If a ship, which at the commencement of the voyage was sufficiently manned and equipped for the voyage, loses in the course of it so many of her officers or crew by sickness or other cause, or runs so short of stores, that it is impossible for her to proceed on the voyage safely without procuring more, and if no more can be procured except by making a port out of the direct course of the voyage, the putting into such port for such purpose is not a deviation. It is otherwise, however, if the ship goes into a port out of the usual course in order to supply deficiency which existed when she sailed, in crew, equipment, or stores.(*o*)

Where, therefore, a ship, which ought to have sailed with a full complement of men engaged for the whole voyage, sailed with two of her number engaged for part only of the voyage, and put into a port out of the limits of the policy in order to supply that deficiency, this was held to be a deviation;(*p*) and

(*h*) Arnould, § 161 (1).

(*i*) Phillips on Ins. 1020; *Phelps* v. *Hill*, (1891) 1 Q. B. 605.

(*k*) *Phelps* v. *Hill*, *ubi sup.*

(*l*) *Lavabre* v. *Wilson*, 1 Doug. 284, 290.

(*m*) Per Lindley, L.J., (1891) 1 Q. B. at p. 611.

(*n*) *Guibert* v. *Readshaw*, Park Ins. 637.

(*o*) Arnould, § 161 (2); *Woolf* v. *Claggett*, 3 Esp. 257; Phillips, 1018; see also *Phelps* v. *Hill*, (1891) 1 Q. B. 605.

(*p*) *Forshaw* v. *Chabert*, 3 B. & B. 158.

where a ship put into a port, out of her course, in order to procure medicines and medical assistance, with which she ought to have been adequately provided when she sailed, it was held to be a deviation.(q) And the same is the case with regard to provisions.

Making port to procure stores.

If, however, the want of provisions is caused, not by original insufficiency, but by consumption during unavoidable delay, caused by contrary winds or the like, then the going out of the course to procure the necessary supply would not be a deviation.(r)

Stress of weather.

§ 211. It is no deviation if a ship is driven out of her course by stress of weather; or if the master puts into a port out of his course, or delays his sailing in order to take refuge from a tempest or to wait for a wind, provided that in so acting he does what a prudent man, in the exercise of sound judgment, would have done under the circumstances with a view to the benefit of all concerned.(s)

Thus, where a ship insured "*from London to St. Kitt's*" was separated from her convoy by a storm, and afterwards captured before she could return again into the direct course from London to St. Kitt's, and while the master was doing his best to get to his destination, and to meet the convoy crossing, it was held that there was no deviation.(t)

So, where a ship, insured *from St. Kitt's to London*, was driven by a storm out of the port of St. Kitt's and was obliged to run to St. Eustatia, and after many unsuccessful efforts to get back to St. Kitt's, finally gave up the attempt, and completed her lading at St. Eustatia, whence she sailed for London, it was held to be no deviation; and Lord Mansfield said: "If a storm drive a ship out of her voyage into any port, and being there, she does the best she can to get to her port of destination, she is not obliged to return back to the point from whence she was driven."(u)

So, if a ship find her port of destination blocked up by ice, or otherwise rendered physically inaccessible, or (as it seems) unsafe by reason of an embargo, and she make the nearest practicable port, with a view of staying there till her own is open, it is not a deviation.(x)

Avoiding disaster.

§ 212. The ship may go out of her course, or delay, in order to avoid disaster, as well as to refit after a disaster has happened to her,(y) and this is so whether the policy be against the perils of the sea generally, or against one or some only of such perils.(z)

(q) *Woolf* v. *Claggett*, 3 Esp. 257.

(r) *Raine* v. *Bell*, 9 East, 195; *Thomas* v. *Royal Exch. Ass. Co.*, 1 Price, 195.

(s) Arnould, § 161 (3); Phillips, 1023.

(t) *Harrington* v. *Halkeld*, Park Ins. 639.

(u) *Delaney* v. *Stoddart*, 1 T. R. 22.

(x) *Blackenhagen* v. *London Ass. Co.*, 1 Camp. 454; Arnould, § 161 (3).

(y) Phillips, 1023.

(z) Phillips on Ins. 1025; cp. *Scott* v. *Thompson*, 1 N. R. 181.

Avoiding capture.

Thus the endeavour to avoid the imminent peril of capture justifies a deviation, either by lying in the port of loading, or by putting into a port out of the course of the voyage, or by departing from the course of the voyage insured, provided the danger is real and immediate.(*a*) And, provided the apprehension is founded on reasonable evidence, it would seem that the master is entitled to pause and take a reasonable time to make further inquiries, even though it may turn out that the information was erroneous.(*b*)

So where a ship, insured "against capture in port of loading," hurries out of such port, to avoid the imminent peril of capture, though only half loaded and totally unprepared for the voyage, and afterwards puts into a port out of the course of her voyage in order to repair damage occasioned by such hasty escape from her port of loading, it is not a deviation.(*c*)

In *The Teutonia*,(*d*) the master of a Prussian ship, having on board contraband of war, under a charter-party and bill of lading from Pisagua bound to Cork, Cowes, or Falmouth, for orders to proceed to any safe port in Great Britain or on the Continent, between Havre and Hamburgh, both included, and there deliver the cargo, "the act of God, the Queen's enemies, fire, and all and every other risk, dangers, and accidents of the seas, rivers, and navigation of whatever nature and kind soever excepted," arrived at Falmouth on the 10th of July, 1870, and received orders on the 11th of that month to proceed to Dunkirk and there deliver her cargo. On her arrival off Dunkirk on the 16th, the master was informed by a French pilot that war had broken out between France and Prussia, whereupon the master put back to the Downs, to make inquiries, and anchored there on the 17th, which was Sunday. On the 18th, having telegraphed to the owner of the ship for instructions, he was ordered not to go to Dunkirk, and on the 19th he put into Dover, where he was informed that war, which had been imminent on the 10th, had been declared between France and the North German Confederation, formal declaration thereof having been given as upon

(*a*) Arnould, § 161 (4); *Driscol* v. *Bovill*, 1 B. & P. 313; *Blackenhagen* v. *London Ass. Co.*, 1 Camp. 454; Phillips on Ins. 1023.

(*b*) Per Cur. *The Teutonia*, L. R. 4 P. C. 171, 179 *infra*; *The San Roman*, L. R. 5 P. C. 301; *Pole* v. *Cetovitch*, 9 C. B. N. S. 430; Phillips, 1023. See, however, Arnould, § 161 (4); *Atkinson* v. *Ritchie*, 10 East, 530. It should be noticed that in these cases the dispute was between cargo-owner and shipowner, and not between assured and insurer. "But the same principle is applicable to both classes of cases": per Lindley, L.J., *Phelps* v. *Hill*, (1891) 1 Q. B. at p. 612.

(*c*) *O'Reilly* v. *Gonne*, 4 Camp. 249.

(*d*) L. R. 4 P. C. 171. See also *The San Roman*, L. R. 3 Ad. 593; L. R. 5 P. C. 301, and *The Express*, L. R. 3 Ad. 597. In both of these cases the charter-party contained an exception of restraint of princes, which, however, does not seem to have affected the decision. Such an exception appears to have been one of the grounds of the decision in the similar case of *The Wilhelm Schmidt*, 1 Asp. 82.

the 19th of July. It was held in an action by bill of lading holders for non-delivery of the cargo at Dunkirk, that the master was justified in putting back to the Downs for the purpose of ascertaining whether war had been declared, and was guilty of no improper deviation or delay in not returning to Dunkirk before the 19th of July, when war was actually declared.

Mere apprehension only justifies reasonable delay for inquiry.

But mere apprehension, without actual danger, will not justify delay beyond what is reasonable in order to decide what course to adopt. In the *Patria*,(*e*) the ship was under the flag of the North German Confederation. Part of her cargo was coffee, for which the master signed bills of lading, which provided that the coffee should be delivered at Hamburg (*the dangers of the seas only excepted*) unto the plaintiffs or assigns. On the 5th April, 1870, she sailed on her voyage to Hamburg. She was obliged by the illness of the master and one of the crew to put into Falmouth, near which port she learnt that war had been declared and was being waged between France and the North German Confederation, and that the port of Hamburg was blockaded. On the 18th of September the raising of the blockade was notified. But she remained at Falmouth till the 7th of November. It was held that, according to the terms of the bill of lading, the ship was bound to proceed on her voyage within a reasonable time after the 18th September.

Seeking convoy.

§ 213. It is no deviation for a ship, whether warranted to sail with convoy or not, to depart from the direct course of the voyage in order to seek convoy, either at the usual place of rendezvous, or if necessary elsewhere, provided such necessity do not arise out of her own prior default or delay. The only question in such cases is, whether the circumstances satisfy the jury that the master, in so departing from the direct course of the voyage, acted fairly and *bonâ fide* according to the best of his judgment, and with no other view or motive but to meet with convoy, and thereby to be enabled to reach the terminus of the voyage by the safest way.(*f*)

Delay or deviation to save lives, justifiable

§ 214. Delay, or departure from the direct course of the voyage for the purpose of saving the lives of men threatened with imminent danger of shipwreck or foundering, is not a deviation which will discharge the underwriters.(*g*) Where human life is in danger the rendering of salvage services is an obligation required by the dictates of humanity, by the principles of public policy, and by the general interests of society, and has been so

(*e*) L. R. 3 Ad. 436.

(*f*) Arnould, § 161 (5); Phillips, 1023; *Bond* v. *Gonsales*, 2 Salk. 445; *Bond* v. *Nutt*, 2 Cowp. 601; *Enderby* v. *Fletcher*, 2 Park Ins. 646; *D'Aguilar* v. *Tobin*, Holt N. P. 185; Phillips on Ins. 1023.

(*g*) Arnould, § 161 (6); Phillips on Ins. 1027; 3 Kent. Com. 313.

Delay or deviation to save lives justifiable.

recognised by all civilized states.(*h*) It seems, therefore, that the master has a general authority to render salvage services to persons in distress, even if there is no clause in the policy of insurance or bills of lading as to salvage services, for, as Lord Stowell says,(*i*) "it is the duty of all ships to give succour to others in distress; none but a freebooter would withhold it."(*k*) And this implies a liberty to go out of his course for the purpose of communicating with a ship in distress, inasmuch as her condition "may involve danger to life."(*l*)

To save property, not so.

Whether a deviation for the purpose of rendering salvage service to property would be justifiable as against a goods owner or insurer was in this country long undecided.(*m*) The question was at length raised in a cargo-owner's action in the comparatively recent case of *Scaramanga* v. *Stamp*,(*n*) and was answered in the negative. The right to render salvage services is frequently secured to the shipowner by "liberty to tow and assist" reserved in the policy or the contract of carriage.(*o*)

Barratry.

§ 215. Speaking generally, where a ship is forced out of her course by a peril insured against, such a departure from her course is not one which will vacate the policy. Nor is it a deviation if the ship is voluntarily put off her course in consequence of damage by a peril insured against.(*p*)

And so detention, or departure from the usual course of the voyage in the prosecution of a barratrous act, is part of the barratry, for which the underwriters are liable, and not a deviation by which they are excused.(*q*)

The Master's Duty not to Commit Barratry.

Barratry, and by whom it may be committed.

§ 216. It is the duty of the master to act honestly and legally, and within the authority conferred upon him, whether expressly by his instructions, or impliedly by the requirements of his position as master. Every act of gross and criminal negligence, or of gross misconduct, and every illegal, fraudulent, or criminal act, committed by the master, or the mariners, to the prejudice of the shipowners or freighters, and without their consent or privity, is designated "BARRATRY"(*r*) by the English law.

(*h*) Per Sir R. Phillimore, *The Thetis*, L. R. 2 Ad. 368.

(*i*) *The Waterloo*, 2 Dods. at p. 437; as to salvage, see *infra*, Chap. XV.

(*k*) *Scaramanga* v. *Stamp*, 4 C. P. D. 316, 318; 5 *ib.* 295, 304.

(*l*) 5 C. P. D. at p. 304.

(*m*) See *The Thetis*, *ubi sup.*

(*n*) 4 C. P. D. 316; 5 *ib.* 295; Phillips, 1028.

(*o*) For a case of liberty to tow reserved in the contract of carriage, see *Stuart* v. *British and African Co.*, 32 L. T. N. S. 257. For the like liberty in a policy, *The Thetis*, L. R. 2 Ad. 365.

(*p*) Phillips on Ins. 1024.

(*q*) *Vallejo* v. *Wheeler*, Cowp. 143; *Roscow v. Corson*, 8 Taunt. 684; and see authorities collected *infra* §§ 218–220.

(*r*) Lord Ellenborough defines barratry

If the master is sole owner he cannot commit barratry within the meaning which our law attaches to the term;(s) but if he is only part owner, he may commit barratry against his co-owners.(t) Barratry may also be committed by an owner against a *pro hâc vice* owner.(u)

Where master is owner or part owner.

Barratry of masters and mariners is one of the perils insured against in our common forms of policy, although the wisdom of such insurances, and the opportunities they offer for fraudulent claims have been adversely commented upon, both by Lord Mansfield and Lord Ellenborough.(x) It has been held not to be a "danger of the sea" within the meaning of a bill of lading.(y)

Barratry is insured against.

§ 217. In considering what acts are really barratrous, it must be borne in mind that some acts are so criminal, fraudulent, or illegal, as to require no evidence of wrongful intent to prove them to constitute barratry. Even though the conduct of the master is in his opinion likely to advance the interests of his owners, and intended by him to do so, still, if criminal in respect of the State, it is barratry,(z) unless it has their express or implied assent. In such a case, he is endeavouring to advance the interests of his owners by means which the law forbids, and which his owners also must be taken to have forbidden.

What acts barratrous without proof of intent.

Where, for instance, the master, without such assent, trades illegally with the enemy,(a) or cuts the ship's cable so as to let her drift upon rocks, no evidence of intent is necessary to show that his act is barratrous.

But as barratry is an act done by the master or mariners to the prejudice of the shipowners, or of the charterers, if they are under the charter-party special owners for the voyage, and the ship is insured for their benefit,(b) no act is barratrous to which such owners or charterers have been consenting parties. Otherwise the owners would be able, as against the underwriters, to take advantage of their own wrong, which the law clearly forbids.(c) And if the owners are in fault in not pre-

Act not barratrous when owners consenting parties.

as "a fraudulent breach of duty by the master, in respect to his owners; or in other words, a breach of duty in respect to his owners with a criminal intent, or *ex maleficio*, is barratry." *Earle* v. *Rowcroft*, 8 East, 126, 138, where some earlier definitions will be found collected; see also *Nutt* v. *Bourdieu*, 1 T. R. 323, 330, per Lord Mansfield; *Soares* v. *Thornton*, 7 Taunt. at p. 640, per Gibbs, C.J.; *Lewen* v. *Swasso*, Postle. Dict. 147; *Vallejo* v. *Wheeler*, Cowp. 143; *Lockyer* v. *Offley*, 1 T. R. at p. 259; Abbott, 13th ed. 185 *et seq.*; Maude and Poll. 4th ed. 145; Kent Comm. III., 305; Arnould Ins., § 310; Phillips, 1062; 1 Park Ins. 188.

(s) *Nutt* v. *Bourdieu*, 1 T. R. 328; *Lewin* v. *Swasso*, Postle. Dict. 147; and see *Ross* v. *Hunter*, 4 T. R. 33.

(t) *Jones* v. *Nicholson*, 10 Ex. 28. It seems to be otherwise in the United States; Phillips, 1082.

(u) *Soares* v. *Thornton*, 7 Taunt. 627; § 221, *infra*.

(x) *Nutt* v. *Bourdieu*, 1 T. R. at p. 330; *Earle* v. *Rowcroft*, 8 East, at p. 134.

(y) *The Chasca*, L. R. 4 Ad. 446; *q.v.*, as to the liability of a shipowner when the safe delivery of the cargo is prevented by a barratrous act, *infra* § 359.

(z) *Earle* v. *Rowcroft*, 8 East, at p. 139.

(a) *Ibid.*, 8 East, 126.

(b) See *infra* § 301.

(c) Phillips on Ins. 1077; *Nutt* v.

venting any act of the master or mariners, then, although the owners do not directly assent to it, the act is not barratrous.(*d*)

What acts are not barratrous without proof of such intent.

§ 218. On the other hand, some acts which *primâ facie* would not be so, are barratrous, if done with a wrongful intent. In order to bring these within the class of barratrous acts, evidence must be given of facts which prove a fraudulent or criminal intention on the part of the master to injure his owners. For instance, deviation is not, on the face of it, necessarily criminal or fraudulent. It may have been caused by ignorance, incompetence, or misapprehension. In such cases, the deviation does not amount to barratry. Before it can be adjudged barratrous, proof must be given of a fraudulent or criminal intent on the part of the master, either secretly to benefit himself or to injure his owners.(*e*)

A mere mistake, without dishonesty or violation of duty, is not barratry: as where the master honestly misconstrues his instructions, or commits an error as to the best mode of carrying them out;(*f*) or deviates through ignorance,(*g*) or for the supposed benefit of his owners;(*h*) or violates a blockade through ignorance of the law.(*i*) And where the master of a sea-damaged ship, before survey, broke up her ceiling and end-bows with crowbars, and so injured her, but no proof was given of his having been actuated by any criminal intent in so doing, his conduct did not amount to barratry.(*k*)

On the same principle, where a master persisted in stowing cotton on deck, contrary to the remonstrances of one of the ship's agents, and the bales were afterwards jettisoned in a storm, it was held in the United States that his conduct did not constitute barratry.(*l*)

Acts which have been held to be barratrous.

§ 219. In accordance with the foregoing principles, the following acts have been held to amount to barratry:—

Sailing without paying port dues, whereby the goods are forfeited, lost, or spoiled;(*m*) sailing without leave and in breach of an embargo, in consequence of which the owners afterwards sustained a loss by the detention of the ship;(*n*) wilful breach of blockade, by sailing near, towards, into, or out of a blockaded port,(*o*) or illegal trading with an enemy,(*p*) without the know-

Bourdieu, 1 T. R. 323; *Vallejo* v. *Wheeler*, Cowp. 143; *Everth v. Hannam*, 6 Taunt. 375.

(*d*) Phillips on Ins. 1076; *Pipon* v. *Cope*, 1 Camp. 434.

(*e*) Per Lord Ellenborough, C.J., 8 East, at p. 139.

(*f*) Phillips on Ins. 1063; *Bottomly* v. *Bovill*, 5 B. & C. 210.

(*g*) *Phyn* v. *Royal, &c., Co.*, 7 T. R. 505; *Tait* v. *Levi*, 14 East, 481.

(*h*) *Stamma* v. *Brown*, 2 Str. 1173.

(*i*) Phillips on Ins. 1063.

(*k*) *Todd* v. *Ritchie*, 1 Stark. 240.

(*l*) *Atkinson* v. *Great Western, Ins. Co.*, 27 L. T. N. S. 103.

(*m*) *Knight* v. *Cambridge*, 1 Str. 581; cited 8 East, 135.

(*n*) Per Lord Ellenborough, C.J., 8 East, 138; *Robertson* v. *Ewer*, 1 T. R. 127, as stated by him, *ibid.*

(*o*) *Goldschmidt* v. *Whitmore*, 3 Taunt. 508; Arnould, § 311; Phillips, 1068.

(*p*) *Earle* v. *Rowcroft*, 8 East, 126; Phillips, 1073.

ledge and consent of the owners, though with a view to their benefit, in consequence of which the ship is seized and condemned;(q) cruising for prize contrary to owner's instructions, where the ship was chartered to proceed direct to a port, and in consequence of such cruising was lost;(r) attempting to smuggle goods without the privity of the owner, either at a home or a foreign port;(s) carrying native labourers without a licence in breach of the Pacific Islanders' Protection Act, 1872, without the authority of the owners, and with a knowledge of the prohibition, in consequence of which the ship was seized;(t) wilful deviation or delay whereby the owners are injured, provided it be criminal or fraudulent;(u) running away with the ship, and selling her and part of the cargo;(x) stealing, embezzling, or wilfully destroying the property insured;(y) wilfully running the ship ashore without justifying necessity;(z) fraudulently procuring the ship to be condemned in a Vice-Admiralty Court, and selling her accordingly;(a) colluding with an enemy to have the ship captured;(b) resisting search when rightfully demanded by a belligerent.(c)

Acts which have been held to be barratrous.

It is also barratry if the master is guilty of gross and palpable misconduct and breach of duty to his owners, though without, as it seems, any fraudulent intent:(d) as where knowing the inevitable danger of capture if he proceed on his voyage, he nevertheless continues it and exposes the ship to certain seizure;(e) or, seeing another in the act of scuttling or firing the ship, he will not rise from his berth to prevent it.(f) So, where a master persisted in sailing with a foul wind, contrary to the pilot's directions, having before refused to sail when the wind was fair, and finally, the ship having been stopped when going ashore by getting out an anchor, cut the cable and let her drift on the rocks, this was said to be a clear case of barratry.(g)

§ 220. But if the master is compelled by the mutinous violence of the crew to deviate from his course, although in the teeth of

Violence of crew.

(q) *Goldschmidt* v. *Whitmore*, 3 Taunt. 508; Arnould, § 311; Phillips, 1068.

(r) *Moss* v. *Byrom*, 6 T. R. 379.

(s) Phillips on Ins. 1072; per Willes, J., *Lockyer* v. *Offley*, 1 T. R. at p. 259; *Havelock* v. *Hancill*, 3 T. R. 277; *Cory* v. *Burr*, 8 Ap. Ca. 393, where, however, the underwriters were protected by a warranty against capture and seizure.

(t) 35 & 36 Vict. c. 19; *Australasian Ins. Co.* v. *Jackson*, 33 L. T. 286.

(u) *Vallejo* v. *Wheeler*, Cowp. 143; *Roscow* v. *Corson*, 8 Taunt. 684; *Ross* v. *Hunter*, 4 T. R. 33; Phillips, 1066. "Where the captain deviates from the proper course of the voyage, in fraud of his duty to his owners and for his own private purposes, unknown to them, this is an act of barratry from the moment the ship is carried out of her course:" Arnould, § 311, p. 852.

(x) *Dixon* v. *Reid*, 5 B. & A. 597.

(y) Phillips on Ins. 1071.

(z) *Soares* v. *Thornton*, 7 Taunt. 627.

(a) *Hibbert* v. *Martin*, 1 Camp. 538.

(b) *Arcangelo* v. *Thompson*, 2 Camp. 620; *Hucks* v. *Thornton*, Holt, N. P. 30.

(c) Phillips on Ins. 1068.

(d) Per Lord Ellenborough, *Heyman* v. *Parish*, 2 Camp. at p. 150.

(e) Phillips on Ins. 1074.

(f) Phillips, 1074; *Patapsco Ins. Co.* v. *Coulter*, 3 Peters, 222; Arnould, § 312.

(g) *Heyman* v. *Parish*, 2 Camp. 149; Phillips 1074.

What is barratry in the mariners.

express instructions to the contrary, this is not barratry of the master, though it would be barratry of the mariners.(*h*)

If the mariners commit any crime or fraud which is attended by or which causes the loss or destruction of the ship, under such circumstances of violence or treachery that it could not have been prevented by the prudence or vigilance of the owner, or of his agent the master, this is a loss by barratry of the mariners.(*i*) And there would seem to be no reason why this should be otherwise where the master is owner or part-owner. But, if the owner or master, with ordinary force, or reasonable vigilance, might have prevented it, it is not a loss by barratry of the mariners.(*k*)

Liability of underwriters under policy in favour of owner. When ship is chartered.

§ 221. If a ship is insured on behalf of the owner, the underwriters are liable, under a policy in favour of the owner, for an act of barratry committed by the master with the privity of the freighter.(*l*) And conversely, when the ship is let by charter-party, and the freighter has the right to the control of her, then the owner and the master may concur in an act of barratry against the freighter, who stands in the position of owner *pro hâc vice*.(*m*)

When master is supercargo or consignee.

The fact that the master is also supercargo, or consignee of the cargo, will not prevent the owner of the ship, or the owner of the goods, from recovering for loss by his barratrous acts, for he cannot lay aside his character and responsibility as master until the ship has performed her voyage and arrived at her port of destination.(*n*)

Statutory provisions.

§ 222. Most of the breaches of duty which fall within the definition of barratry, are not in this country punishable as criminal offences; but several offences on the part of the master and mariners which fall within the definition of barratry have been rendered punishable by statutes of various dates. These enactments will be considered in dealing with "Offences and the Maintenance of Discipline." (*nn*)

The Master's Duties at a Port of Discharge to his Employers.

His duty at a port of call for orders.

§ 223. If on reaching the port at which orders to discharge are to be received, the master finds that none have arrived, he is

(*h*) *Elton* v. *Brogden*, 2 Str. 1264, discussed 1 Park Ins. 194; and in *Scott* v. *Thompson*, 1 N. R. at p. 186; Arnould, 312, p. 853.

(*i*) See for example *Toulmin* v. *Anderson*, 1 Taunt. 227; *Toulmin* v. *Inglis*, 1 Camp. 421; *Hucks* v. *Thornton*, Holt, 30; *Brown* v. *Smith*, Dow, 349.

(*k*) *Pipon* v. *Cope*, 1 Camp. 434; Arnould, § 312, p. 853; Phillips, 1081.

(*l*) Phillips, 1078; *Boutflower* v. *Wilmar*, 2 Selw. N. P. 13th ed. 903; but see *Hobbs* v. *Hannam*, 3 Camp. 93.

(*m*) *Soares* v. *Thornton*, 7 Taunt. 641; *Vallejo* v. *Wheeler*, Cowp. 143; Phillips, 1079.

(*n*) Phillips on Ins. 1080; *Earle* v. *Rowcroft*, 8 East, at p. 140.

(*nn*) *Infra*, Chap. XI.

not bound to communicate with the charterer, but after waiting a reasonable time may proceed to any of the ports of discharge named in the charter-party.(o) In *The Alhambra*,(p) the vessel was, by the terms of the charter-party, to proceed to Falmouth for orders, and thence to a "safe port," or as near thereto as she could "safely get, and always lay and discharge afloat." On her arrival at Falmouth, she was ordered to a port where she could not safely "lay and discharge afloat"; and the master, instead of going there, took her to the nearest port thereto which satisfied these conditions, and was held to have been justified in so doing.

"Safe port."

§ 224. When the voyage is ended, the master should, as soon as possible, make a report to his owner, and should take his ship, according to the orders he may then or previously have received, to the place where she is to discharge her cargo.

At port of discharge.

In harbour, the master ought to keep a sufficient crew on board to protect his ship against the ordinary risks which a competent seaman would foresee and provide against.(q) On arriving at his discharging berth, he must take care to have her safely moored or anchored in the proper place for a ship of her class and engaged in her trade, and must then prepare immediately to deliver his cargo.(r)

If ordered by the authorities of the harbour to take up a berth in a particular place, and moor to a buoy there, he ought not to trust implicitly to that which he cannot with certainty know to be a safe buoy, but should take reasonable precautions, in the event of its not holding him, to enable him to bring his ship up and secure her from danger; as, for instance, by keeping his anchor prepared to be let go.(s)

To the Mercantile Marine Office Superintendent and Consuls.

§ 225. A number of duties are imposed by statute on the master on the arrival of his ship at her destination. The following is a summary of these duties:—

By the Merchant Shipping Act 1854:

His duty as to delivery of the agreement with crew.

161. (4) The master of every foreign-going ship (t) shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver the agreement with his crew to a [mercantile marine office superintendent] (u) at the place; and such [superintendent]

(o) *Sieveking* v. *Maas*, 6 E. & B. 670.

(p) 6 P. D. 68. A port which is naturally safe, but entry into which without a permit involves risk of confiscation, is not a "safe port," *Ogden* v. *Graham*, 1 B. & S. 773.

(q) *The Excelsior*, L. R. 2 Adm. 268.

(r) As to delivering the cargo, see §§ 319–328 *infra*.

(s) *The William Lindsay*, L. R. 5 P. C. 338, 343; see §§ 228, 632 *infra*.

(t) Defined, 17 & 18 Vict. c. 101, s. 2; *supra* § 32.

(u) 25 & 26 Vict. c. 63, s. 15. This expression, or the word "superintendent"

shall thereupon give to the master a certificate of such delivery; and no officer of Customs shall clear any foreign-going ship inwards without the protection of such certificate.

For non-compliance with this requirement the master incurs a maximum penalty of £5.(x)

Lists to be made for all ships, containing certain particulars.

273. Every master of every foreign-going ship(y) of which the crew is discharged in the United Kingdom(z), in whatever part of her Majesty's dominions the same is registered, and of every home-trade(y) ship, shall make out and sign a list(a) in a form sanctioned by the Board of Trade, containing the following particulars (that is to say):

(1) The number and date of the ship's register and her registered tonnage:

(2) The length and general nature of the voyage or employment:

(3) The christian names, surnames, ages, and places of birth of all the crew, including the master and apprentices; their qualities on board, their last ships or other employments, and the dates and places of their joining the ship:

(4) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof:

(5) The names of any members of the crew who have been maimed or hurt, with the times, places, causes, and circumstances thereof:

(6) The wages due to any of the crew who have died, at the times of their respective deaths:

(7) The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold:

(10) Every marriage which takes place on board, with the date thereof, and the names aud ages of the parties.(b)

Lists for foreign-going ships to be delivered to superintendent on arrival.

274. In the case of foreign-going ships, the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to [the superintendent] before whom the crew is discharged such list as hereinbefore required, and if he fails so to do, shall for every default incur a penalty not exceeding five pounds; and such [superintendent] shall thereupon give to the master

merely, is used throughout in transcribing the sections of the Merchant Shipping Act, 1854, wherever the phrase "shipping master" occurs in the original.

(x) 17 & 18 Vict. c. 104, s. 161.

(y) Defined 17 & 18 Vict. c. 104, s. 2; *supra* § 32.

(z) This provision does aot apply to Lascars or other "native" seamen not discharged in this country. Their case seems to be still governed by 4 Geo. 4, c. 80, which requires (ss. 27 & 28) the master to make out, and deliver to the Customs officer, before the ship can be entered, a list of Lascars or Asiatic sailors employed on board during any part of the voyage, with an account of what has become of those not on board, under a penalty of £10 for each such Lascar or sailor in respect of whom there is any non-observance of this duty.

(a) So much of this part of the Act as relates to delivery or transmission of lists of crews to the Registrar-General of Seamen applies to all fishing vessels of the United Kingdom; to all ships of the Trinity House, or the Commissioners of Northern Lighthouses, or the Dublin Corporation; to all pleasure yachts, and their owners, masters, and crews. And so much as relates to delivery and transmission of lists applies to all British ships, wherever registered, whose crews are discharged, or whose final port of destination is in the United Kingdom, and to their owners, masters, and crews, 17 & 18 Vict. c. 104, s. 109. And see § 3, *sup.*, note (m).

(b) Sub-s. (8) & (9) relating to particulars of births and deaths on board ship were repealed by 37 & 38 Vict. c. 88, s. 54. The substituted provisions contained in s. 37 of that Act are summarised *supra* § 126.

a certificate of such delivery; and no officer of Customs shall clear inwards any foreign-going ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists to be delivered by home-trade ships half-yearly.

275. The master or owner of every home-trade ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some [mercantile marine office superintendent] in the United Kingdom such list as hereinbefore required for the preceding half-year, and shall in default incur a penalty not exceeding five pounds; and such [superintendent] shall give to the master or owner a certificate of such transmission or delivery; and no officer of Customs shall grant a clearance or transire for any home-trade ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists to be sent home in case of transfer of ship and in case of loss.

276. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or of a home-trade ship, the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the [superintendent] at the port to which the ship has belonged such list as hereinbefore mentioned, duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and in default shall for each offence incur a penalty not exceeding ten pounds; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the [superintendent] at the port to which the ship belonged such list as hereinbefore mentioned, duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding ten pounds.

Official log to be delivered.

We have seen above(*c*) that the master of a foreign-going ship is required under similar penalties, within forty-eight hours of arrival at his final destination, or upon the discharge of the crew, and the master or owner of a home-trade ship at intervals of six months, to deliver to the superintendent his official log-book.

We have also seen (*d*) that the master of every British ship is required on the arrival of his ship in the United Kingdom, or when and where the Board of Trade directs, to deliver or send a return of births or deaths on board to the Registrar-General of Shipping and Seamen. Where the return is directed to be delivered at a place out of the United Kingdom, the Board may direct its delivery to the shipping master, or if the place be foreign, to the British consul.

Agreements, indentures, and assignments, on arrival at a foreign port, to be deposited with the consul; and at a colony, with the officers of Customs.

Whenever his ship remains at any port abroad for more than forty-eight hours, whether it be her port of discharge or not, the master must bear in mind the following enactment:(*e*)

(1) Whenever any ship, in whatever part of her Majesty's dominions the same is registered (except ships whose business for the time being is to carry passengers), arrives at any foreign

(*c*) *Supra* § 127; 17 & 18 Vict. c. 104, s. 286.

(*d*) *Supra* § 126; 37 & 38 Vict. c. 88, s. 37.

(*e*) 17 & 18 Vict. c. 104, s. 279.

port where there is a British consular officer, or at any port in any British possession abroad, and remains thereat for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver to such consular officer or to the chief officer of Customs (as the case may be), the agreement with the crew, and also all indentures and assignments of apprenticeships, or, in the case of a ship belonging to a British possession, such of the said documents as such ship is provided with:

(2) Such officer shall keep such documents during the ship's stay in such port, and, in cases where any indorsements upon the agreement are hereby required, shall duly make the same, and shall return the said documents to the master a reasonable time before his departure, with a certificate, indorsed on the agreement, stating when the same were respectively delivered and returned:

(3) If it appears that the required forms have been neglected, or that the existing laws have been transgressed, such officer shall make an indorsement to that effect on the agreement, and forthwith transmit a copy of such indorsement, with the fullest information he can collect regarding such neglect or transgression, to the Registrar-General of Seamen:

And if any master fails to deliver any such document as aforesaid, he shall for every such default incur a penalty not exceeding twenty pounds; and in any prosecution for such penalty it shall lie upon the master either to produce the certificate of the consular officer or officer of Customs hereinbefore required, or to prove that he duly obtained the same, or that it was impracticable for him so to do.

The Master's Duties to the Authorities of the Harbour.

To observe regulations, and pay dues.

§ 226. When the ship is in a harbour or port, it is the master's duty to strictly observe and obey the regulations in force there, and to pay all proper port, light, or other dues. For the latter he is in general personally liable,(*f*) and when there is a custom to that effect it seems that the anchor and sails may be distrained for port dues.(*g*)

The powers and duties of lighthouse authorities with reference to regulation and collection of light dues, exemption of certain ships therefrom, and publication of tables and regulations in force with respect thereto, are defined by the Merchant Shipping Act, 1854.(*h*) By s. 400 of that Act no clearance or transire may be granted at any port where light dues are payable, unless the receipt for them is produced.

Enforcement of light dues. Powers of distress.

And by s. 401 the authorised collector of light dues is expressly empowered, in case they are not paid on demand, in addition to other remedies, to enter upon the "ship, and distrain the goods, guns, tackle, or any other thing belonging to or on

(*f*) *Mayor of London* v. *Hunt*, 3 Lev. 37; *Vinkestone* v. *Ebden*, 1 Salk. 248; Maude & Poll. 4th ed. 134.

(*g*) *Vinkestone* v. *Ebden*, *ubi sup.*

(*h*) 17 & 18 Vict. c. 104, ss. 396—403

board" of her; and in case of continued non-payment, after three days he may have the same appraised and sold, and apply the proceeds in payment of the light dues and reasonable expenses, paying the surplus to the owner or master. Elaborate provisions for the recovery of rates, including the like powers of distress, are contained in "The Harbours, Docks, and Piers Clauses Act, 1847,"(*i*) and are applicable in all ports and harbours which are subject to that Act.

"The Harbours, Docks, and Piers Clauses Act, 1847."

§ 227. Some of the master's duties in such ports and harbours are defined by sections of the Act itself. Others are defined by bye-laws, made under the authority of the Act.(*k*) These duties are enforced by penalties.

The provisions of the Act bearing upon the master are as follows:—

2. . . . . The expression "the prescribed limits," used with reference to the harbour, dock, or pier, shall mean the distance measured from the harbour, dock, or pier, or other local limits (if any) beyond the harbour, dock, or pier, within which the powers of the harbour-master, dock-master, or pier-master, for the regulation of the harbour, dock, or pier, shall by the special Act be authorized to be exercised; . . . . the expression "the harbour, dock, or pier" shall mean the harbour, dock, or pier, and the works connected therewith, by the special Act authorized to be constructed; the expression "the harbour-master" shall mean, with reference to any such harbour the harbour-master, and with reference to any such dock the dock-master, and with reference to any such pier the pier-master, respectively appointed by virtue of this or the special Act, and with respect to all Acts authorized or required to be done by such harbour-master, dock-master, or pier-master, shall include the assistants of every such harbour-master, dock-master, or pier-master.

"The prescribed limits:"

"the harbour, dock, or pier:" "the harbour master:"

And with respect to the collection and recovery of rates, be it enacted as follows:

Collection of rates.

34. The collector of rates may, either alone or with any other persons, enter into any vessel within the limits of the harbour, dock, or pier, in order to ascertain the rates payable in respect of such vessel, or of any goods therein.

Collector may enter vessels to ascertain rates payable.

35. Within twenty-four hours after the arrival within the limits of the harbour, dock, or pier of any vessel liable to rates, the master of such vessel shall report such arrival to the harbour-master, and if he fail to make such report within the time aforesaid he shall be liable to a penalty not exceeding ten pounds.

Master to report arrival of vessel.

Penalty for neglect.

36. The master of every registered vessel shall, on demand, produce the certificate of the registry of such vessel to the collector of rates, and if any such master refuse or neglect to make such production, on demand, he shall be liable to a penalty not exceeding twenty pounds.

Master of vessel to produce certificate of registry.

37. When any goods are intended to be unshipped within the limits of the harbour, dock, or pier, the master of the vessel containing such goods shall, within twelve hours after the arrival of such vessel within the limits of the harbour, dock, or pier, deliver to the collector of rates

Masters of vessels to give accounts of goods intended to be unshipped within the limits, &c.

(*i*) 10 & 11 Vict. c. 27, ss. 34–48.

(*k*) Sects. 83–91. As to the effect of these sections see *London Association of Shipowners* v. *London and India Docks*, (1892) 3 Ch. 242.

the name of the consignee of the goods intended to be unshipped, or other person to whom the same are to be delivered, and if the whole cargo be intended to be unshipped, a copy of the bill of lading or manifest of the cargo, or, if part only of the cargo be intended to be unshipped, the best account in writing in his power of the kinds, weights, and quantities of the several goods intended to be unshipped; and every such master shall, if required so to do by the collector of rates, give to him twelve hours' notice of the time at which the cargo of such vessel, or any part of the same, is intended to be unshipped.

Penalty on masters giving no account, or a false account, of goods to be unshipped.

38. Every master of a vessel of which the cargo or part of the cargo shall be unshipped within the limits of the harbour, dock, or pier, who shall have failed to deliver or to give any of the particulars in regard to the cargo or the notice in regard to the unshipment thereof hereinbefore required to be delivered or given by such master, or who shall deliver or give any false particulars or notice, shall for every such offence be liable to a penalty not exceeding ten pounds.

Duty of shippers.

Sect. 39 relates to the duties of shippers, requiring them to give a true account of goods intended to be shipped, under a maximum penalty of £20 for default.

In case of dispute between collector and master, &c., goods to be weighed or measured.

40. If any difference arise between the collector of the rates and the master of any vessel or the owner of any goods concerning the weight or quantities of the goods in respect of which any rates are payable, such collector may cause all such goods to be weighed or measured, and, if necessary, may detain the vessel containing such goods until they have been weighed or measured.

As to the expenses of weighing or measuring goods.

41. If the weight or quantity of such goods be greater than that shown by the manifest, bill of lading, account, or statement delivered by the master of the vessel or by the owner of the goods, the expenses of such weighing or measuring shall be paid to the undertakers,(*l*) and shall be recoverable by the same means as are herein or in the special Act provided for the recovery of rates; but if the weight or quantity of such goods be the same or less than that shown by the manifest, bill of lading, account, or statement so delivered, the undertakers shall pay all the expenses of such weighing or measuring, and shall also pay to the master of the vessel or to the owner of the goods all the expenses occasioned by such weighing or measuring, or by the detention of the vessel for that purpose.

Rates on goods when payable.

42. The rates payable to the undertakers in respect of any goods shipped or unshipped within the limits of the harbour, dock, or pier shall be paid as follows: (that is to say) if such goods are to be shipped they shall be paid before the shipment, or if such goods are to be unshipped they shall be paid before the removal of the goods from the premises of the undertakers, and before the expiration of two months next after they were unshipped.

Penalty on evading payment of rates.

43. If the master of any vessel or the owner of any goods evade the payment of the rates payable to the undertakers in respect of such vessel or goods, or any part thereof, he shall pay to them three times the amount of the rates of which he shall so have evaded the payment, and the same shall be recovered from such master or owner respectively in the same manner as penalties imposed by this Act are directed to be recovered, or by action in any court of competent jurisdiction.

44. If the master of any vessel in respect of which any rate is

(*l*) *i.e.* The persons authorized to carry out the special Act under which the harbour, dock, or pier is constructed: s. 2.

payable to the undertakers refuse or neglect to pay the same, or any part thereof, the collector of rates may, with such assistance as he may deem necessary, go on board of such vessel, and demand such rates, and on nonpayment thereof, or of any part thereof, take, distrain, or arrest, of his own authority, such vessel, and the tackle, apparel, and furniture belonging thereto, or any part thereof, and detain the matters so distrained or arrested until the rates are paid; and in case any of the said rates shall remain unpaid for the space of seven days next after any distress or arrestment so made, the said collector may cause the matters so distrained or arrested to be appraised by two or more sworn appraisers, and afterwards cause the matters distrained or arrested, or any part thereof, to be sold, and with the proceeds of such sale may satisfy the rates so unpaid, and the expenses of taking, keeping, appraising, and selling the matters so distrained or arrested, rendering the overplus (if any) to the master of such vessel upon demand.

Recovery of tonnage rates by distraint of ship and tackle.

45. If default be made in the payment of the rates payable in respect of any such goods, the collector of rates may distrain or arrest, of his own authority, such goods, and for that purpose may enter any vessel within the limits of the harbour, dock, or pier in which the goods may be, with such assistance as he shall deem necessary, or if the said goods have been removed without payment of such rates he may distrain or arrest any other goods within the limits of the harbour, dock, or pier, or the premises of the undertakers, belonging to the person liable to pay such rates, and may sell the goods so distrained or arrested, and out of the proceeds of such sale pay the rates due to the undertakers, rendering the overplus, if any, to the owner of such goods, on demand; or the undertakers may recover such rates by action in any court having competent jurisdiction; provided always, that the collector of rates shall, before making any such distress or arrestment as aforesaid, pay all duties which may be payable to Her Majesty in respect of the goods so distrained or arrested, and he may retain the amount of duties so paid out of the proceeds arising from the sale of such goods.

Recovery of rates on goods.

46. If any dispute arise concerning the amount of any rates due, or the charges occasioned by any distress or arrestment, by virtue of this or the special Act, the person making such distress or using such arrestment may detain the goods distrained or arrested until the amount of the rates due or the charges of such distress or arrestment be ascertained by a justice, if in England or Ireland, and by the sheriff if in Scotland, who, upon application made to him for that purpose, shall determine the same, and award such costs to be paid by either of the parties to the other of them as he shall think reasonable, and such costs, if not paid on demand, shall be levied by distress or poinding and sale, and such justice or sheriff shall issue his warrant accordingly.

Disputes concerning rates or charges occasioned by distress to be settled by a justice in England or Ireland, and in Scotland by the sheriff.

47. The undertakers shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several rates for the time being payable,(*m*) and shall cause such boards containing such lists to be fixed in front of the principal office of business of the undertakers, and on some conspicuous part of the quays of the harbour, dock, or pier; and no rate shall be

List of rates to be set up in large and legible characters.

(*m*) As to the meaning of the expression "trading inwards" and "trading outwards," where different rates are imposed on vessels coming under these descriptions respectively, see *Mersey Docks and Harbour Board* v. *Henderson*, 13 Ap. Ca. 595, a case decided on 21 & 22 Vict. c. xcii. s. 230 (Mersey, 1858).

payable during such time as such list is not so affixed, nor shall any rate not specified in such list be payable: Provided always, that if any such list be destroyed, injured, or obliterated, the rates shall continue payable during such time as may be reasonably required for the restoration or reparation of such list, in the same manner as if such list had continued affixed and in the state required by this Act.

Collector of customs may withhold a clearance to any vessel until the rates paid.

48. The collector or other proper officer of Her Majesty's Customs for the district within which the harbour, dock, or pier is situate may, with the consent of the commissioners of Her Majesty's Customs, refuse to receive any entry or give any cocquet, discharge, or clearance, or to take any report inwards or outwards of any vessel liable to the payment of any of the rates imposed by the special Act, until the master of such vessel produces to such collector or officer a certificate under the hand of the collector of rates, that the rates payable in respect of such vessel, and any goods imported or exported by such vessel, have been paid, or if there be any dispute as to the rates payable, until such collector or officer shall be satisfied that sufficient security has been given for the payment of such rates when ascertained, together with the expenses arising from the nonpayment thereof.

§ 228. The following sections impose upon masters certain duties when in harbour, and require conformity to the directions of harbour, dock, and pier masters.

Master not liable for accident occasioned by enforced obedience to harbour authorities.

In this connection it may be useful to mention that neither master nor owners are liable, in case of accident to third persons, for the consequences of conforming without negligence to the directions of an officer of the harbour whom they are bound by statute to obey;(*n*) though it is otherwise where the accident is occasioned by the negligence of those in charge of the ship while so conforming.(*o*)

Liability of harbour authorities for negligent directions of their servants

And further, where damage is caused to the ship herself, without negligence of those in charge of her, through conformity to directions negligently or improperly given by a harbour officer whom they are bound to obey, the person who gave the directions will be liable to the shipowners for such damages. And (except in the case of a Queen's harbour) (*p*) the harbour authority will also be liable,(*q*) provided their officer was acting within the scope of his authority, as such,(*r*) and within the statutory powers of the harbour authority.(*s*) And on general principles, apart from any statutory duty of obedience, a wharfinger who invites a vessel to a berth, where owing to causes which are not apparent, and are unknown to those in charge of her, it is unfit for her to lie, is liable for damages occasioned to her by compliance with that invitation.(*t*)

(*n*) *The Bilbao*, Lush. 149; and see § 632 *infra*.

(*o*) *The Cynthia*, 2 P. D. 52; cp. *The Belgic*, *ib.* 57, note.

(*p*) *Wright* v. *Lethbridge*, 63 L. T. 572.

(*q*) *The Rhosina*, 10 P. D. 24, 131; *Reney* v. *Magistrates of Kirkcudbright*, (1892) A. C. 264.

(*r*) *The Apollo*, (1891) A. C. 499 (revg. 60 L. T. 112; 61 *ib.* 286).

(*s*) *Shaw* v. *Timaru Harbour Board*, 15 Ap. Ca. 429.

(*t*) *The Moorcock*, 13 P. D. 157; 14 *ib.* 64. Disting. *The Calliope*, (1891) A. C. 11, where, however, the general principle is affirmed, per Lord Halsbury, C., at p.

Disregard of the orders of a harbour-master, who is by law empowered to give them, as to the navigation of a ship within his jurisdiction cannot be justified unless the danger of following them was fully obvious to those on board. Mere apprehension of danger is not sufficient.(*u*)

The sections above-mentioned are as follows:—

Penalty on shipmasters not complying with directions of the harbour master.

53. The master of every vessel within the harbour or dock, or at or near the pier, or within the prescribed limits, if any, shall regulate such vessel according to the directions of the harbour master made in conformity with this and the special Act; and any master of a vessel, who after notice of any such direction by the harbour master served upon him, shall not forthwith regulate such vessel according to such direction, shall be liable to a penalty not exceeding twenty pounds.

Harbour master may remove vessels within docks, &c.

58. If the master of any vessel in or at the harbour, dock, or pier, or within the prescribed limits, if any, shall not moor, unmoor, place, or remove the same according to the directions of the harbour master, or if there be no person on board of any such vessel to attend to such directions, the harbour master may cause such vessel to be moored, unmoored, placed, or removed as he shall think fit, within or at the harbour, dock, or pier, or within the prescribed limits, and for that purpose the harbour master may cast off, unloose, or cut the rope, or unshackle or break the chain by which any such vessel is moored or fastened; and all expenses attending the mooring, unmooring, placing, or removing of such vessel shall be paid to the undertakers by the master of such vessel: Provided always, that before the harbour master shall unloose or cut any rope or unshackle or break any chain by which any vessel, without any person on board to protect the same, shall be moored or fastened, he shall cause a sufficient number of persons to be put on board of such vessel for the protection of the same.

Vessels entering harbour or dock to be dismantled as harbour master shall direct.

59. Before any vessel shall enter the harbour or dock or approach the pier the master thereof shall cause her to be dismantled as directed by the harbour master; and if any vessel shall enter the harbour or dock or approach the pier without being dismantled in the manner required by the harbour master, after notice shall have been given to the master of such vessel so to dismantle the same, such master shall for every such offence be liable to a penalty not exceeding ten pounds.

Vessels to have their sails lowered when entering and navigating dock.

60. Before any vessel shall enter into the dock the master of such vessel shall cause her sails to be lowered or furled; and if the master of any vessel shall navigate the same under sail into or in the dock he shall for every such offence be liable to a penalty not exceeding ten pounds.

Vessels to have hawsers, &c., fixed to moorings.

61. Every vessel in the harbour or dock or at or near the pier shall have substantial hawsers, tow-lines, and fasts fixed to the dolphins, booms, buoys, or mooring posts, when required by the harbour master; and if any vessel shall be in the harbour or dock or at or near the pier without substantial hawsers, tow-lines, or fasts fixed as aforesaid, after notice from the harbour master to the master of such vessel to furnish or fix the same, such master shall for every such offence be liable to a penalty not exceeding ten pounds.

Penalty for wilfully cutting moorings.

62. Every person other than the harbour master who shall wilfully cut, break, or destroy the mooring or fastening of any vessel lying in

13; Lord Watson, at p. 23; and Lord Herschell, at p. 27.

(*u*) *Reney* v. *Magistrates of Kirkcudbright*, (1892) A. C. 264.

the harbour or dock or at or near the pier shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on vessels lying near the entrance of harbour or dock without permission.

63. As soon as the harbour or dock shall be so far completed as to admit vessels to enter therein, no vessel, except with the permission of the harbour master, shall lie or be moored in the entrance of the harbour or dock, or within the prescribed limits; and if the master of any vessel either place it or suffer it to remain in the entrance of the harbour or dock, or within the prescribed limits, without such permission, and do not, on being required so to do by the harbour master, forthwith proceed to remove such vessel, he shall be liable to a penalty not exceeding five pounds, and a further sum of twenty shillings for every hour that such vessel shall remain within the limits aforesaid, after a reasonable time for removing the same has expired after such requisition.

Vessels may be removed for the purpose of repairing harbour or dock.

64. Whenever the undertakers shall deem it necessary, for the purpose of repairing, scouring, or cleansing the harbour, dock, or pier, that any vessel lying therein or thereat shall be removed therefrom, the master of such vessel shall, within three days after notice in writing, signed by the harbour master, has been given to him, remove such vessel according to such notice; and in case of his neglecting so to do such master shall be liable to a penalty not exceeding ten pounds.

Harbour master may remove such vessel if the master thereof neglect or refuse so to do.

65. If the master of such vessel cannot be found, or if he neglect or refuse to remove the same, as required by the said notice, the harbour master may remove such vessel to such station as he shall select, and the expenses of such removal shall be paid to the undertakers by the owner of the said vessel or the master thereof: Provided always, that previous to the repair of the harbour, dock, or pier which shall require the removal of the vessels therefrom, the harbour master shall give three days' notice of such repair and of the necessity for such removal to the collector and comptroller of the Customs of the district within which the harbour, dock, or pier is situate, or which shall be specified for that purpose in the special Act, and cause a like notice to be affixed on some conspicuous part of such Custom House and of the office of the undertakers.

§ 229. And with respect to the discharging of vessels and the removal of the goods, be it enacted as follows:

Delivery of cargoes and placing of discharged vessels.

66. The master of every vessel which shall go into the harbour or dock for the purpose of being discharged of her cargo shall cause her to be so discharged as soon as conveniently may be after entering therein, and shall cause her, after being so discharged, to be removed without loss of time into such part of the harbour or dock as shall be set apart for light vessels, and the harbour master shall cause a part of the harbour or dock to be set apart for light vessels accordingly; and if the master of any such vessel shall not cause it to be so removed within twenty-four hours after being required so to do by notice in writing signed by the harbour master, he shall be liable to a penalty not exceeding ten pounds, and the harbour master may cause such vessel to be so removed, and the expenses of such removal shall be paid to the undertakers by the master of such vessel.

§ 230. And with respect to the protection of the harbour, dock, and pier, and the vessels therein, from fire or other injury, be it enacted as follows:

Combustible matter on quays, &c., to be removed.

69. Every person being the owner of or having the charge of any tar, pitch, resin, spirituous liquors, turpentine, oil, or other combustible thing which shall be upon any quay, dock, or wharf belonging to the

undertakers, or on the deck of any vessel within the harbour or dock, or at or near the pier, shall cause the same to be removed to a place of safety within two hours after being required so to do by notice in writing, signed by the harbour master, and if he fail so to do shall forfeit a sum not exceeding forty shillings for every hour such combustible thing shall remain in any such place as aforesaid after the expiration of two hours from the service of the said notice.

Combustibles to be guarded during the night.

70. If any such combustible thing as aforesaid shall remain on any part of the quays or works connected with the harbour, dock, or pier, or on the deck of any vessel within the harbour or dock or at or near the pier after sunset, the owner or person having the charge of the same, or on his default the harbour master, at the expense of such owner, shall provide a sufficient number of persons to guard the same from half an hour before sunset to half an hour after sunrise; and such expense, if not paid by the said owner to the undertakers, on demand, shall be ascertained and recovered in the same manner as damages for the recovery of which no special provision is made are by this Act directed to be ascertained and recovered.

Penalties against offences herein named:

71. Every person who shall commit any of the acts following shall be deemed guilty of an offence, and shall for every such offence be liable to a penalty not exceeding ten pounds (that is to say):

Boiling or heating pitch, &c.

1. Every person who shall boil or heat any pitch, tar, resin, turpentine, oil, or other combustible matter in any vessel lying within the harbour or dock or near the pier, or in any place within the limits of the harbour, dock, or pier, except in such place and in such manner as shall be specially appointed by the undertakers for that purpose:

Fires in vessels.

2. Every person who shall have or cause to be had any fire or lighted candle or lamp in any vessel within the harbour or dock, or at or near the pier, except with the permission of the harbour master:

Fires within docks.

3. Every person who shall have or cause to be had any fire, candle, or lamp lighted within any of the docks or the works belonging to the same, except at such times and in such manner as shall be permitted by the byelaws of the undertakers:

Loaded guns.

4. Every person who shall bring any loaded gun on the quays or works of the harbour or dock or on the pier, or shall have or suffer to remain any loaded gun in any vessel in the harbour or dock or at or near the pier:

Gunpowder.

5. Every person who shall, without the permission of the undertakers, bring or suffer to remain any gunpowder on the quays or works of the harbour, or within the dock or on the pier, or in any vessel within the harbour or dock or at or near the pier.

Power to enter ship, and search for and extinguish fires or lights.

72. The harbour master may enter into any vessel within the harbour or dock, or at or near the pier, to search for any fire or light in or suspected to be in such vessel contrary to the provisions of this or the special Act, or of any byelaw made in pursuance thereof, and may extinguish the same; and any person who shall obstruct the harbour master in the execution of such duty shall for every such offence be liable to a penalty not exceeding ten pounds.

Penalty for throwing ballast, &c., into harbour or dock.

73. Every person who shall throw or put any ballast, earth, ashes, stones, or other thing into the harbour or dock shall for every such offence be liable to a penalty not exceeding five pounds: Provided always, that nothing in this Act contained shall prejudice or prevent any person from adopting any measures which but for the passing of

this Act he would be lawfully entitled to adopt for recovering any land which shall at any time have been lost to him, or severed from land belonging to him, by reason of the overflowing or washing of any navigable river, or for protecting his land from future loss or damage by the overflowing or washing of such navigable river.(*x*)

Owner of vessel answerable for damage to works.

74. The owner of every vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or the quays or works connected therewith, and the master or person having the charge of such vessel or float of timber through whose wilful act or negligence any such damage is done shall also be liable to make good the same; and the undertaker may detain any such vessel or float of timber until sufficient security has been given for the amount of damage done by the same: Provided always, that nothing herein contained shall extend to impose any liability for any such damage upon the owner of any vessel where such vessel shall at the time when such damage is caused be in charge of a duly licensed pilot, whom such owner or master is bound by law to employ and put his vessel in charge of.(*y*)

As to the recovery of amount of damage to quays, &c.

75. If the amount claimed in respect of any such damage as aforesaid do not exceed fifty pounds, such damage shall be ascertained, and the amount thereof shall, in England or Ireland, be recovered before two justices, and in Scotland before the sheriff; and in addition to the remedies hereby provided for the recovery of the same, the justices or sheriff before whom the same are recovered may cause the vessel or float of timber causing such damage, and any tackle and furniture thereof, to be distrained and kept until the amount of damages and costs awarded by them is paid, and if the same be not paid within seven days after such distress or keeping, may cause the property so distrained or kept, or any part thereof, to be sold, and out of the proceeds of such sale may pay the amount of damages and costs awarded by such justices or sheriff, and all the charges incurred by the distress, keeping, and sale of such property.

Owner may recover damage from his servants.

76. If the owner of any vessel or float of timber make satisfaction for any such damage as aforesaid, wilfully or negligently done by the master or person having charge of such vessel or float of timber, or if the owner of any vessel or goods in any other case have been compelled to pay any penalty or costs by reason of any Act or omission of any other person, the person who actually did such damage or who committed such offence shall repay to the owner of such vessel or such goods the amount of the damage or penalty and costs, together with the costs of the proceedings to enforce such repayment; and if such damage or penalty respectively do not exceed fifty pounds the sum may, in England or Ireland, be recovered before two or more justices, and in Scotland before the sheriff.

(*x*) See also 54 Geo. 3, c. 153.

(*y*) Under this section the owner and master of a ship doing damage to the piers or works of a harbour, were held not liable to make good damage caused by the ship being driven against the works after the crew had necessarily left her under stress of weather, and without any negligence on their part; *Wear Commissioners* v. *Adamson*, 2 Ap. Ca. 743; 1 Q. B. D. 546. *Dennis* v. *Tovell*, L. R. 8 Q. B. 10. An earlier case, where the damage was done while the crew were on board, was overruled in the Court of Appeal (*ubi sup.*), but not expressly so in the House of Lords. The liability for damage to a pier in a foreign country is regulated by the law of that country. *The M. Moxham*, 1 P. D. 107; revg. 1 P. D. 43.

The Master's Protests.

§ 231. On the arrival of the ship at her port of destination, and also when she is obliged, after any extraordinary accident or injury, to put into a port other than that of her destination, it is usual for the master to present himself at the office of a notary, and to cause an entry or note, called a "protest," to be made, and to sign it himself at such office. "Protest" on arrival in port.

If made on the arrival of a ship at her port of destination, it should contain a narrative of the voyage, together with some particulars, such as the names of the ship, of the master, and of the port from which she came, the time of her departure, the nature of her cargo, and the date of her arrival; and, when the master has been compelled to put into an intermediate port, the protest should describe in particular the storms, &c., encountered, the accidents which have occurred, the necessity which has compelled him to put into such intermediate port, and the conduct which, under emergency, he has thought proper to pursue.(*z*) Its contents.

It is also prudent, if the ship is not unloaded at the expiration of the lay days in the port of discharge, for the master to make or note a protest against the consignee, or other party receiving delivery of the cargo, giving him notice of the date of the ship's being ready to discharge; of the number of days allowed for unloading, of the date of the expiration of those days, and of the fact that the ship then commences to lie on demurrage; so as to fix with certainty the precise days, and so as to avoid future dispute as to these matters. Protests are also made by the master against the charterer of the ship, for not loading the ship pursuant to contract, or within reasonable or stipulated delays, and by the merchant against the master, for misconduct, for drunkenness, &c., for not proceeding to sea with due despatch, for not signing bills of lading in the customary form, and for other irregularities.(*a*) Protest against delay in discharging, or loading. Protests against master.

§ 232. The best mode of entering up these details, and one which is becoming general, is to have a printed book of registry, containing the formal parts of such entries, with proper blanks, in which the above-mentioned particulars are to be supplied. The ceremony of entering is called "*noting a protest*" or "*entering a note of a protest.*" The protest is afterwards drawn up or "extended." "Noting" and "extending" a protest.

There is no precise form generally adopted for a protest. It varies exceedingly. It generally consists of two parts. *The first* is a statement or declaration of the facts and circumstances of Form.

(*z*) Abbott, 13th ed. 457; Brooke, Office of a Notary, 3rd edition, 146.

(*a*) Abbott, 13th ed. 467.

the voyage; of the storms or bad weather which the ship may have encountered, and of any accidents which may have occurred during the voyage; *and the second* is the part in which the appearers or the notary, or both the appearers and the notary, protest against the accidents, or causes of the injury, and against all loss or damage occasioned thereby, and at the end or foot is an attestation or certificate under the hand and seal of the notary. The protest used formerly to be made on oath, but now that is no longer necessary.(*b*)

When to be done.

Masters of ships consider that by usage the protest may be noted at any time within forty-eight hours after arrival. It is, however, much more frequently done on the day of arrival, or on the next day.(*c*) Although this is an important ceremony, yet the master ought not to leave his post, or neglect his duty in times of urgency, wreck, or danger, in order to perform it; but should, under such circumstances, defer it until the first convenient opportunity.(*d*)

How dated.

The protest must bear the true date when made, or it would render all parties liable to grave suspicions. And in case of there being any good reason for the master having delayed to note his protest until after the usual time, it is customary to add to the entry or noting, a short statement of the reason why the master did not enter a note of his protest sooner, so as to form part of his entry.(*e*)

When noting has been delayed.

Before whom.

If there should not happen to be a notary at the port into which the ship has put, it is customary for the master of a British ship to note his protest before some person holding a public situation or office, connected in some degree with the British Government, such as a magistrate, collector, or controller of customs, &c. And in such case he should keep a copy of the noting, and should request the official before whom it is made to mark or certify it; and if a protest is afterwards formally prepared, the master should mention the fact of such noting in the protest.(*f*)

Duty to give information and join in protest.

§ 233. According to commercial usage, it is considered a part of the duty of the master and crew to give faithful information respecting the circumstances of the voyage, and to join in and make a true and impartial protest when required to do so, by the shipowners, or any of the owners or consignees of the cargo; and it is said that a master who refuses to do so is so far guilty of a breach of duty as to render himself liable to an action for

(*b*) Brooke, 149; see forms, pp. 219 *et. seq.* chap. xii; 5 & 6 Will. 4, c. 62, s. 15.

(*c*) Brooke's Office of Notary, 3rd ed., p. 146.

(*d*) Brooke, 147.

(*e*) Brooke, 148.

(*f*) Brooke, 147.

loss or inconvenience caused by such refusal. The expense of the protest, however, cannot be thrown on the master. If the owners or consignees of the cargo require a protest, they must pay for it, or reimburse the shipowners or master.(*g*)

At expense of person requiring it.

§ 234. Protests are often of great utility in this country, and especially in matters connected with the adjustment of losses in marine insurances and in the calculation of averages. They are received as evidence in foreign Courts, and even in this country credit is often given to their contents by merchants and underwriters, when they are free from all circumstances of suspicion. But with whatever formality the protest is drawn up, and however important may be its uses in certain cases, it cannot be received in our Courts as evidence *for* the master or his owners, though it may be used as evidence *against* him or them.(*h*) He should therefore take care to supply from the log-book, from the recollection of himself, his mate, or his most trustworthy seamen, correct and clear instructions for its preparation.(*i*)

Utility of protests.

When protests received in evidence.

Protests are evidence *against* master.

(*g*) Brooke, 150.

(*h*) *Christian* v. *Coombe*, 2 Esp. 489; see also *Senat* v. *Porter*, 7 T. R. at p. 159; *The Betsy Caines*, 2 Hagg. 28; Phillips on Ins. 2095.

(*i*) Abbott, 13th ed. 457.

CHAPTER V.

THE MASTER'S DUTIES AND POWERS WITH RESPECT TO THE CARGO.

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Generally:—As Agent of the Shipowner.

Master generally agent of shipowner.

§ 235. WITH respect to the cargo, the master is primarily and generally the agent of the shipowner, to convey it safely to the place of its destination, in order to earn freight. In the ordinary state of things, he has nothing to do with the cargo, except to keep and convey it safely as such agent; and he is equally with the shipowner responsible for its safety.(*a*) But, as

(*a*) *Mors* v. *Slue*, 1 Vent. 238.

we shall see, circumstances may arise during the voyage which render it expedient and necessary that he should act for the owner of the cargo, and in such cases, as will be seen,(*b*) the wise policy of the law, founded upon the experience of many nations aud many centuries, invests him with an implied authority from such owner to do so.

His duties as such agent.

As agent of the shipowners, the master is entrusted with the cargo for the purpose of conveying it safely to its destination. This purpose he is bound to accomplish by every reasonable and practicable method.(*c*) Accordingly, as such agent he is bound to receive the cargo, to stow it properly, to ventilate it when necessary, to take all possible care of it during the voyage.(*d*)

Extent of master's responsibility for the goods. As common carrier.

§ 236. The master and shipowners being *primâ facie* common carriers of goods (*e*) for hire, are at common law, irrespectively of the terms of the contract of carriage, regarded as insurers against all loss or injury occasioned to the goods delivered to them on freight by fire, robbery, even when effected by superior force, or any cause other than the act of God or the king's enemies,(*f*) or the natural deterioration or inherent vice of the goods themselves.(*g*)

Usually limited by express exceptions.

But their right to limit this liability by express contract is usually exercised, both in the charter-party and in the bill of lading, by a clause expressly saving them from liability for certain specified perils, in some such form as this:—"The act of God, the king's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, during the said voyage, always excepted."(*h*) And the master is not responsible for injury to the cargo caused by any of the risks covered by such exceptions, unless he, or some member of the crew in the course of his employment,(*i*) has been guilty of a want of reasonable skill, diligence, and care,(*k*) or of some breach of contract causing the loss.(*l*)

(*b*) *Infra* §§ 238–242.

(*c*) *Cammell* v. *Sewell*, 3 H. & N. at p. 644; 5 *ib.* 728; *Tronson* v. *Dent*, 8 Moo. P. C. 419, 449; *Assecurazioni, &c.* v. *Steamship Bessie Morris Co.*, (1892) 1 Q. B. 571; 2 Q. B. 652.

(*d*) Abbott, 13th ed., 430; Parsons Sh. 20. Per Willes, J., "That a duty to take care of the goods generally exists cannot be doubted;" *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 230. As to his duties of receiving, stowing, &c., the cargo, see *infra* §§ 247–259.

(*e*) Abbott, 13th ed., 468, 469; Smith's Merc. Law, Bk. III., c. 2; *Coggs* v. *Bernard*, 1 S. L. C. 9th ed. 200, 215, and notes, 236; *Mors* v. *Slue*, 1 Vent. 238; *Dale* v. *Hall*, 1 Wils. 281; Story on Bailments, 496; *Laveroni* v. *Drury*, 8 Ex. 166; *Liver Alkali Co.* v. *Johnson*, L. R. 9 Ex. 338; see, however, per Cockburn, C.J., *Nugent* v. *Smith*, 1 C. P. D. at p. 427.

(*f*) *Forward* v. *Pittard*, 1 T. R. 27; *Barclay* v. *YGana*, 3 Doug. 389.

(*g*) *Nugent* v. *Smith*, 1 C. P. D. 423; *Blower* v. *G. W. R.*, L. R. 7 C. P. 655.

(*h*) As to the meaning and force of these words, see §§ 357–359 *infra*.

(*i*) See Story on Agency, 314; *supra* § 89.

(*k*) *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 235; *Dale* v. *Hall*, 1 Wils. 281.

(*l*) As by carrying goods on deck without liberty to do so: *Royal Exchange Shipping Co.* v. *Dixon*, 12 Ap. Ca. 11; reported below, 33 W. R. 868 (sub. nom. *Newall* v. *Royal, &c., Co.*).

When exception in bill of lading does not protect master.

But the exceptions in the contract of carriage do not, in the absence of an express stipulation, exempt either shipowner or master from the consequences of not using reasonable skill, diligence, and care; but only from the absolute liability of a common carrier, so far as the excepted causes are concerned.

Therefore, notwithstanding those exceptions, if it is proved that the injury was caused by the negligence or breach of contract of the owners or master, or of the persons employed by them in navigating the ship, they are liable, even when the exceptions cover the cause of injury.(*m*) In the absence of such proof, however, the exceptions protect both master and owners from the consequences of all damage apparently caused by any of the excepted perils.(*n*)

Exception of master's negligence.

A wider protection is often obtained by the addition to the list of exceptions of such words as "even when occasioned by the negligence of the pilots, master, mariners or other servants of the shipowners."(*o*) But the mere insertion of such words in a charter-party to which the master was not a party, or in a bill of lading given by some agent of the shipowner other than the master, would not, as it seems, protect him from liability for loss or injury caused to the goods by his own negligence.(*p*)

Master's duty in case of damage to ship,

§ 237. The duty of the master in case of damage to the ship is to do all that can be done towards bringing the adventure to a successful termination; to repair the ship, if there be reasonable prospect of doing so at an expense not ruinous, and to bring home the cargo and earn the freight, if possible.(*q*) He should not in any case, where any other course is possible, expose the cargo to risk by proceeding on the voyage with the ship in an unseaworthy condition.(*r*) And he may even in certain cases of necessity hypothecate the cargo or sell a part of it for the cost of repairs or supplies to the ship, or of obtaining her release in case of capture or arrest.(*s*)

or cargo.

There are some cases where the master, as representing the shipowners and their interest, is bound to take active measures for the preservation of the cargo from loss or deterioration in case of accidents; as, for instance, when a perishable cargo is so

(*m*) See per Willes, J., *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 235; *Grill* v. *General Iron, &c., Co.*, L. R. 1 C. P. 600; L. R. 3 C. P. 476; *Lloyd* v. *Same Co.*, 3 H. & C. 284; *Phillips* v. *Clark*, 2 C. B. N. S. 156; *Czech* v. *G. S. Nav. Co.*, L. R. 3 C. P. 17; *Leuw* v. *Dudgeon, ib.*, note; *Royal Exchange Co.* v. *Dixon*, 12 Ap. Ca. 11.

(*n*) *Czech* v. *G. S. Nav. Co.*, L. R. 3 C. P. 17; *Ohrloff* v. *Briscall*, L. R. 1 P. C. 231, 240.

(*o*) As in *The Cressington*, (1891) P. 152; and see *Norman* v. *Binnington*, 25 Q. B. D. 475.

(*p*) The meaning and effect of exceptions in the contract of carriage is further discussed *infra* §§ 356–369; see also §§ 147, 148 *sup.*

(*q*) *Benson* v. *Chapman*, 2 H. L. 696, 720; *Assecurazioni, &c.*, v. *Steamship Bessie Morris Co.*, (1892), 1 Q. B. 571; 2 Q. B. 652.

(*r*) *Worms* v. *Story*, 11 Ex. 427.

(*s*) See as to Hypothecation, Chap. IX., *infra*; as to sale, §§ 412–417 *infra*.

damaged by sea water that it cannot in its existing state be taken forward in specie to the port of discharge, so as to earn freight, but where it could, at an expense considerably less than the freight, be dried and carried on. In such case if it be for the interest of the shipowner to dry it, and if it can be done without delay,(*t*) it is the duty of the master to do so.(*u*)

As Agent of the Owners of the Cargo.

When master becomes agent of owners of cargo.

§ 238. Sometimes the master is appointed supercargo, or consignee of the cargo, in which case the rights and duties of the latter character are superadded to his ordinary rights and duties.(*x*) Apart from such appointment, the character of agent for the owners of the cargo is imposed upon the master by the necessity of the case, and by that alone. In the absence of such necessity, he has no right, without express authority, to assume to act as such agent. If, therefore, according to the circumstances in which he is placed, communication can be had with the cargo-owners or their agents, and they can give their own orders, the character of agent is not imposed upon the master, because the necessity which creates it does not arise. And if it is reasonable to expect that he might obtain an answer within a time not inconvenient, looking to the circumstances of the case, it is his duty to communicate with the cargo-owners, or at least to attempt to do so, before assuming to act for them.(*y*) The possibility of communicating must be construed by estimating the cost and risk incidental to the delay which will be caused by the attempt to do so, and the probability of failure after every exertion has been made.(*z*)

Duty of master to communicate where reasonably possibly.

His duty when he cannot communicate.

§ 239. In every contract to carry for freight there is an implied obligation on the part of the shipowner that, in the event of any disaster happening to the ship or cargo in a port where correspondence cannot be had with the freighter, the master shall act as agent for the freighter, and use the best efforts for the protection of his interests. The master must, in any such emergency, put himself in the place of the owner of the cargo, and do what the latter, as a prudent man, would himself do for his own interest, if he were present, and use all reasonable means to preserve and take care of the goods;(*a*) always remembering that his primary

To act as prudent cargo-owner.

(*t*) See *infra* § 240.

(*u*) *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 234; *Mordy* v. *Jones*, 4 B. & C. 394.

(*x*) Story on Agency, § 36.

(*y*) Per Sir J. Coleridge, *The Hamburg*, B. & L. 253, 274; *The Gratitudine*, 3 C. Rob. at p. 257; *The Lizzie*, L. R. 2 Ad. at p. 259; see also *Phelps* v. *Hill*, (1891) 1 Q. B. 605.

(*z*) Per Sir W. Erle, *The Karnak*, L. R. 2 P. C. at p. 513.

(*a*) Per Cockburn, C.J., *Notara* v. *Henderson*, L. R. 5 Q. B. at p. 353; L. R. 7 Q. B. 225, Ex. Ch.; *Kidston* v. *Empire Ins. Co.*, L. R. 1 C. P. at p. 544. As to the master's duty to a charterer who has put up the ship as a general ship, and is to receive freight on delivery of the cargo, see *Assecurazioni, &c.*, v. *Steamship*

duty, as well to the freighter as to the shipowner, is to complete the voyage upon the terms agreed upon, unless such a course is either "physically impossible or so clearly unreasonable as to be impossible in a business point of view." And, so far as the ship herself is concerned, there is no such impossibility, if the expense of repairing her sufficiently to complete the voyage is not greater than her value when so repaired.(*b*)

The duties of master as agent for owners of cargo;

to check deterioration.

As representative of the shipowner, it is the master's duty to the owner of the cargo to take reasonable care of the goods entrusted to him, not merely by doing what is necessary to preserve them on board the ship during the ordinary incidents of the voyage, but also by taking active measures, where reasonably practicable under all the circumstances, to check and arrest the loss or deterioration resulting from accidents, for the necessary and immediate consequences of which the shipowner is not liable by reason of the exception in the bill of lading.(*c*)

Right to recover disbursements from cargo-owner.

The duty, imposed by necessity, to act for the safety of the cargo in such manner as may be best under the circumstances, implies a correlative right to charge its owner with the expenses properly incurred in so doing.(*d*) And a shipowner or master who, through such circumstances, finds it necessary for the safety of the cargo to incur expenditure is justified in doing so, and can maintain a claim for reimbursement against the owner of the cargo.(*e*) He may also, in certain cases of necessity, hypothecate the cargo in order to raise the necessary expenses of its preservation.(*f*)

Under what circumstances master must take steps to preserve cargo from growing damage.

§ 240. In determining whether under the circumstances the master ought to have taken active special measures to preserve the cargo from growing damage by accident, a fair allowance must be made for the difficulties in which he was involved. The place, the season, the extent of the deterioration of the goods, the opportunity and means at hand, the interests of other persons concerned in the adventure, whom it might be unfair to delay for the sake of the part of the cargo in peril—in short, all circumstances affecting risk, trouble, delay, and inconvenience—must be taken into account. Nor ought it to be forgotten that the master has to exercise a discretionary power, and that his acts are not to be censured merely because of an unfortunate result, unless it can

Bessie Morris Co., (1892) 1 Q. B. 571; 2 Q. B. 652.

(*b*) Per Collins, J., *Assecurazioni &c.*, v. *Steamship Bessie Morris Co.*, (1892) 1 Q. B. at p. 579: (as to the last proposition, see S. C. in the C. A., 2 Q. B. 652;) per Lindley, J., *Hill* v. *Wilson*, 4 C. P. D. 329, 333, 334.

(*c*) *Notara* v. *Henderson*, L. R. 5 Q. B. 346; 7 Q. B. 225.

(*d*) Per the Judicial Committee, *Cargo ex Argos*, L. R. 5 P. C. at p. 165, *infra* § 270; *Notara* v. *Henderson*, L. R. 7 Q. B. 225, 235.

(*e*) Per Kelly, C.B. and Pollock, B., *Great Northern R. Co.* v. *Swaffield*, L. R. 9 Ex. at pp. 136, 138.

(*f*) See Hypothecation, Chap. IX. *infra*.

be affirmatively made out that he has been guilty of a breach of duty.(*g*)

Not bound to delay or deviate.

He is not bound materially to delay his voyage, or to deviate, to the prejudice of the shipowner, in order to put the cargo in a condition fit to be carried on. If, for example, a vessel ships a heavy sea, and the cargo is wetted and liable to be damaged, but the ship still remains in a fit condition to prosecute the voyage, the master would not be bound to put into the nearest port in order to tranship and dry the cargo. On the other hand, if a vessel is in a port of call or refuge, and by an insignificant delay, not amounting to a deviation, the goods might be carried on in a fit state to their destination, it would seem to be his duty to wait for them.(*h*)

His duties when in a port of call or refuge with damaged cargo.

But he is not bound, after doing all that he reasonably can do during his stay there to improve the condition of the damaged cargo, and to mitigate the injury as far as possible, to wait till the cargo is fit to be carried on, if the voyage would be thereby unduly protracted.(*h*) In such a case, he must not take on the cargo when it is, from being damaged by sea-water or otherwise, in an unfit state to be carried on, merely for the purpose of earning freight, but must do the best that can be done with it, as cargo which he is obliged to leave behind.(*i*) Accordingly, if the ship meets with damage, and is obliged to put into a foreign port to repair, where the freighter cannot be consulted, and the cargo is wetted by sea-water, and is seriously and rapidly deteriorating, and much of the accruing damage would be prevented if it were taken out and dried, but a far longer time would be required to do that than to effect the repairs, it is the duty of the master to provide, either for sending on the cargo when sufficiently dry by another ship, or for selling it on the spot, as may best serve the interests of the freighter. He would not be justified in taking the cargo on in its then condition, if any better course could be adopted,(*k*) although, if he sells it, he will not be entitled even to *pro ratâ* freight.(*l*)

À fortiori, if the freighter is at the port into which the ship has put to repair, and proposes to receive the cargo there, and to pay freight *pro ratâ*, the master will not be justified in carrying it on in its then condition in order to earn his full freight.(*m*)

Notara v. *Henderson*.

In *Notara* v. *Henderson*,(*n*) the plaintiffs shipped beans on

(*g*) Per Willes, J., L. R. 7 Q. B. at p. 237.

(*h*) Per Cockburn, C.J., *Notara* v. *Henderson*, L. R. 5 Q. B. at p. 354; and see per Willes, J., L. R. 7 Q. B. 237; 2 Parsons, Sh. 22.

(*i*) *Notara* v. *Henderson*, L. R. 5 Q. B. 346, 354; 7 Q. B. 225.

(*k*) Per Cockburn, C.J., L. R. 5 Q. B. 355. As to when the master may sell the cargo, see §§ 260–264 *infra*.

(*l*) *Vlierboom* v. *Chapman*, 13 M. & W. 230. See §§ 272, 285 *infra*.

(*m*) *Notara* v. *Henderson*, L. R. 5 Q. B. 346, 356; 7 Q. B. 225.

(*n*) L. R. 5 Q. B. 346; 7 *ib.* 225.

Master's duties when in a port of call or refuge with damaged cargo.

board the defendant's ship, under a bill of lading, from Alexandria to Glasgow, with leave to call at intermediate ports, deliverable to plaintiffs' order on payment of freight by consignees. The ship called at Liverpool, and in going out met with a collision (a peril excepted in the bill of lading), and was obliged to put back for repairs, which detained her a few days. The beans were wetted by sea-water in consequence of the collision; and the plaintiffs being at Liverpool, offered to receive them there, paying freight *pro ratâ;* but the defendants' agent refused to deliver them without being paid full freight, and the beans were carried on to Glasgow; and on their arrival they were much deteriorated in value, beyond what they would have been by the mere wetting by the collision, if they had been dried instead of being carried on as they were. The beans might have been removed at Liverpool from the ship to warehouses and spread out and dried, there being warehouse accommodation within half a mile of the dock in which the ship was, and by this means the decomposition would have been materially arrested or mitigated. The cost of unshipping, drying, and re-shipping would have been particular average payable by the shippers. It was held, that inasmuch as the facts showed that the beans might have been taken out and dried (which was clearly a proper thing to do on behalf of the owners) and then re-shipped, without unreasonably delaying the whole adventure, it was therefore the duty of the master to have done so, and that consequently the defendants were liable.

When voyage defeated by incapacity of the cargo.

§ 241. If the voyage is defeated, and cannot be completed by reason of the incapacity of the cargo, the master should do that which a wise and prudent man would think most conducive to the benefit of all concerned, and if he takes measures for the preservation of the goods, and for the conveyance of them back to their owner, he is entitled to the return freight and incidental expenses.(*o*)

In case of collision,

§ 242. It seems that in case of collision in or near a foreign port, whereby damage is done to the cargo, the master has authority to institute an action in rem in the foreign port on behalf of the cargo-owners against the vessel which collided with him.(*p*)

or wreck.

In case of wreck he ought, if possible, to preserve the most valuable goods first, and by attention and presence of mind endeavour to lessen the evil, and save, or help to save, as much as possible.(*q*)

(*o*) *The Cargo ex Argos*, L. R. 4 Adm. 13, 28; 5 P. C. 134, 155; *infra* § 270.

(*p*) Per Butt, J., *The Reinbeck*, 60 L. T. 209.

(*q*) Per Willes, J., *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 233; *R. M. S. Packet Co.* v. *English Bank of Rio*, 19 Q. B. D. 362, 375, per Wills, J.

On Behalf of all Concerned.

Duty to "jettison" tackle or cargo.

§ 243. In case of imminent danger, and where the safety of the adventure requires it, it may become the duty of the master to "jettison" or throw overboard parts of the cargo, or to cut and cast away masts, spars, rigging, or other furniture of the ship. He may select what articles he pleases; he may determine what quantity—a fourth, a moiety, three-fourths—nay, in cases of extreme necessity, when the lives of the crew cannot otherwise be saved, he may throw overboard the whole cargo.

The exercise of this power cannot, however, be justified except in cases of extreme danger: nothing short of that will do. The mere convenience of better sailing, or more commodious stowage, will not justify his throwing overboard the smallest part;(*r*) but when there is danger of a total loss of the common adventure, so imminent and conclusive as in the view of a judicious and skilled mariner to admit of but one alternative, and that a sacrifice, it is not only justifiable, but the duty of the master, as agent for all, to make it.(*s*) Where the occasion admits of his doing so, the master will naturally consult his officers and men as to the necessity of making the jettison; but this rule of consulting the crew is rather founded in prudence, in order to avoid disputes, than in necessity.(*t*)

General average contribution.

§ 244. In case of jettison, or other voluntary sacrifice, properly made,(*u*) of the property of one or more of the parties to the adventure for the benefit of all, the loss so occasioned is called a "general average" loss or sacrifice, and is subsequently apportioned by a contribution called an "average contribution," or a "contribution in general average," assessed upon what is saved of ship, cargo, and freight.(*x*)

Whose agent is the master in jettisoning?

§ 245. It has been said by a high authority (*y*) that in jettisoning cargo, under circumstances constituting the act a general average sacrifice, the master acts as the agent of the cargo-owner. If so, by parity of reasoning, in cutting away masts or rigging, under such circumstances he acts as agent of the shipowner. In view, however, of the principle that a general average contribution can only be claimed where a sacrifice has been voluntarily made, or expense incurred, for the common protection against a common peril, it is suggested that in each

(*r*) Per Lord Stowell, *The Gratitudine*, 3 C. Rob. at p. 258.

(*s*) Maclachlan's Arnould, 6th ed. 847.

(*t*) Per Lord Kenyon, C.J., *Birkley* v. *Presgrave*, 1 East, at p. 228; Phillips, 1279.

(*u*) See §§ 295 *et seq. infra.*

(*x*) Phillips, 1279. Where a ship is proceeding in ballast to her loading port, and her owners alone are interested in ship and chartered freight, there can be no general average loss or sacrifice, with which to charge underwriters of a policy on the freight: *The Brigella*, 9 T. L. R. 399.

(*y*) *Burton* v. *English*, 12 Q. B. D. 220, per Brett, M.R.

act of jettison the master really acts as the agent, *ex necessitate*, of all concerned.(*z*) The question is not perhaps of importance, except for purposes of classification.

Putting into port to refit or recruit.

§ 246. We have seen above (*a*) that in case of necessity it may become the duty of the master, in the interest of all concerned, to put back or into a port out of his usual course in order to refit or recruit. The expense of so doing will in general be charged to general average.(*b*)

The Master's Duties with respect to the Receiving and Stowing the Cargo.

Ballast.

§ 247. Before taking any cargo on board, it is the duty of the master to see that his ship is properly ballasted.(*c*) He may take merchandise as ballast, provided it occupies no more space than ballast would.(*d*) If he has no water ballast tanks or permanent iron ballast, he should obtain stone ballast, where it can be obtained, rather than sand ballast. The latter ought never to be taken where stone ballast or similar ballast can be obtained; and where the master is compelled to take sand ballast, it is his duty to use every possible means to prevent its entering into the pumps and choking or injuring them.(*e*)

A breach of duty in this respect may endanger his certificate. In the *Golden Sea*,(*f*) it was proved that the master had authority to provide ballast without restriction as to price, but nevertheless took improper ballast, whereby the pumps were choked and the ship foundered. His certificate was suspended for three months.

The master's duty to provide ballast, dunnage, ropes, &c.

It is also the duty of the master to see that his ship is furnished with proper and sufficient dunnage,(*g*) and that she is in a fit state to receive and carry her cargo;(*h*) and he must be prepared with the ropes, tackle, and all such things as are necessary for properly and safely shipping the goods and stowing them on board.(*i*)

§ 248. We have already seen,(*k*) that where by the terms of

(*z*) See per Brett, L. J., *Whitecross Wire Co.* v. *Savill*, 8 Q. B. D. at p. 663; Carver, § 15; per Lord Kenyon, C.J., and Lawrence, J., 1 East, at p. 228.

(*a*) §§ 208, 209.

(*b*) See *Svendsen* v. *Wallace*, 10 Ap. Ca. 404; 13 Q. B. D. 69; *Atwood* v. *Sellar*, 4 Q. B. D. 342; 5 *ib.* 286; *infra* § 297.

(*c*) Per Blackburn, J., *Southampton, &c., Co.* v. *Clarke*, L. R. 6 Ex. at p. 57.

(*d*) *Towse* v. *Henderson*, 4 Ex. 890; see also § 257 *infra*.

(*e*) See Lee's Manual, p. 27.

(*f*) 7 P. D. 194.

(*g*) Dunnage is loose wood or other matters placed against the sides and bottom of the hold, and above the ballast, to save the cargo from the effects of leakage, Abbott, 13th ed. 391; 2 Parsons Sh. 1. It seems to be the common practice that there should be at least six inches in the bottom and nine in the bilges, and that where the cargo is in bags, there should, in addition, be matting all the way up the sides, Lee's Manual, p. 28. If the cargo is damaged from the want of dunnage, the shipowner is liable.

(*h*) Cp. *Canada Shipping Co.* v. *British Shipowners', &c. Assn.*, 22 Q. B. D. 727; 23 *ib.* 342; where cargo was damaged through the ship being tainted with creosote.

(*i*) Abbott, 13th ed. 391.

(*k*) *Supra* § 158.

a charter-party, the ship is to proceed to a named port, and there load a cargo from the agents of the freighter, the latter are entitled to notice from the master of the time when the outward cargo, if any, is discharged, and the ship is ready to load. If by reason of such notice not being given, the freighter's agents have no fair means of knowing that the ship is ready, and therefore cannot load her, he is not liable for not providing a cargo.(*l*)

When master should give notice that ship is ready.

§ 249. As the cargo is received on board, the master should begin, if engaged in the foreign trade, to fill up his manifest, and if in the home trade, to keep his cargo-book, each of which should contain an accurate description of the goods shipped, the marks, the packages and their contents, and the names of the shippers and of the consignees, and if there is anything improper in the appearance of any package, a record of such fact also; (*m*) it being remembered that the receipt of the goods by the master, either on board the ship, or at a wharf or quay near the ship, for the purpose of carriage therein, or by any person, whether the master or some other agent, authorized by the shipowner or mate so to receive them, or appearing to have this authority by the assent of the shipowners or master, binds the ship to the safe carriage and delivery of the goods,(*n*) unless prevented by perils excepted in the contract.(*o*)

His manifest and cargo-book.

Responsibility on receipt of the goods.

The manner of taking goods on board and the commencement of the master's duty in this respect, depend on the custom of the particular place, unless that be excluded by express stipulation in the charter-party.(*p*) Where the usage of the wharf is to deliver goods lying there to the mate of the ship by which they are to be carried, the master and not the wharfinger is liable, if, after they have been so delivered, and before they are shipped, they are lost from the wharf.(*q*)

Manner of taking goods on board.

It is usual for the mate or person in charge of the loading to sign receipts for the goods at the time of shipment, and deliver them to the shipper. These are afterwards exchanged for Bills of Lading.(*r*)

Mate's receipt.

§ 250. In the absence of custom or agreement to the contrary, it is the duty of the master, on the part of the shipowner, to receive and properly stow on board the goods to be carried, so that they be not injured, either by being taken on board, or by the motion or leakage of the ship.(*s*) For any damage to the goods

Master's duty to receive and stow.

(*l*) *Fairbridge* v. *Pace*, 1 Car. & K. 317; *Stanton* v. *Austin*, L. R. 7 C. P. 651; per Brett, M.R., *Nelson* v. *Dahl*, 12 Ch. D. 581–583.

(*m*) Lee's Manual, 29.

(*n*) 1 Parsons on Shipping, 183; *Cobban* v. *Downe*, 5 Esp. 41; *Cooke* v. *Wilson*, 1 C. B. N. S. 153; Abbott, 13th ed. 390.

(*o*) See *Pyman* v. *Burt*, 1 C. & E. 207.

(*p*) Per Willes, J., *Blaikie* v. *Stembridge*, 6 C. B. N. S. at p. 907; *Cobban* v. *Downe*, *ubi sup.*

(*q*) *Cobban* v. *Downe*, 5 Esp. 41.

(*r*) See § 330 *infra*.

(*s*) *Sandeman* v. *Scurr*, L. R. 2 Q. B. 86; *Blaikie* v. *Stembridge*, 6 C. B. N. S. 894.

Consequences of negligence.

occasioned by negligence in the performance of such duty, the master and shipowners are liable to the shipper.(*t*) If the damage result from the misconduct of the master, he is answerable to the shipowners, and also directly to the shipper; but if from the misconduct or negligence of the mate or crew without any fault of the master, it would seem that the master is not liable to the shipowners, but only to the shippers.(*u*) And, inasmuch as a principal is not liable for the torts or injuries or negligences of his agents, in any matters beyond the scope of the agency, unless he has expressly authorized such torts, injuries, or negligences, or subsequently adopted them for his own use or benefit;(*x*) so neither the master, nor the owner, is responsible for wilful injuries, or trespasses, which are done by the persons employed by him, and which were not acts ordered by the master or done in the course of the duty which such persons were employed to perform.(*y*)

Master not liable for wilful injuries by mate or crew.

Improper stowage as affecting policies of insurance.

We have seen above that the stowage must be such as to render the vessel seaworthy for the voyage she is to undertake, since otherwise the policies of insurance will be avoided;(*z*) but although the master has general authority from the shipowner to stow the cargo, he has no implied authority to load it so as to violate a statute. Such an act of the master is not one to which the shipowner must be presumed to have assented, nor will it effect his insurances.(*a*)

Stowage on deck, *primâ facie* improper.

§ 251. *Primâ facie*, the deck is an improper place for the stowage of cargo. If such stowage increases the danger of the ship or of the part of the cargo so stowed, it is an improper stowage. But if a particular mode of stowage be conformable to the established usage of trade, it may not be improper, although another mode may be safer.(*b*) And in the absence of consent or of a custom to the contrary, the carriage of goods on deck is a breach of the contract with the shipper, rendering the shipowner and master liable in case of loss or damage consequent thereon, even when occasioned by an excepted peril.(*c*)

As affecting general average.

Because goods carried on deck are *primâ facie* not in their proper place, and impede the proper navigation of the ship, it is a general rule, that deck lading gives no claim to general

(*t*) See *Hayn* v. *Culliford*, 4 C. P. D. 182.

(*u*) Per Willes, J., 6 C. B. N. S. 907; *Goff* v. *Clinkard*, cited 1 Wils. 282.

(*x*) Story on Agency, 456; *Croft* v. *Alison*, 4 B. & Ald., 590.

(*y*) Story on Agency, 318; *Bowcher* v. *Noidstrom*, 1 Taunt. 568.

(*z*) *Supra* §§ 96, 97, 105.

(*a*) *Wilson* v. *Rankin*, L. R. 1 Q. B. 162; *sup.* § 97; *Cunard* v. *Hyde*, E. B. & E. 670.

(*b*) *Gould* v. *Oliver*, 4 B. N. C. 134; 2 M. & G. 208, 236; and see *Daniells* v. *Harris*, L. R. 10 C. P. 1.

(*c*) *Royal Exchange Shipping Co.* v. *Dixon*, 12 Ap. Ca. 11; (in C. A. 33 W. R. 868, sub. tit. *Newell* v. *Royal Exchange, &c. Co.*); *Gould* v. *Oliver*, 4 B. N. C. 134; 2 M. & G. 208.

average.(*d*) And this rule is not affected in the case of a general ship by the owner of the deck cargo having consented to its being carried on deck, unless the other cargo-owners have consented also.(*e*) But an exception to this general rule may be created by custom, as where it is the custom in a particular trade to carry part of the cargo, or articles of a certain character on deck; as for example in the coasting trade. For by the custom, the deck becomes a proper place for the goods. In such cases, deck-lading would give occasion to general average.(*f*) And in the case of a ship chartered for the carriage of an entire cargo, which is by agreement to be carried on deck, if deck goods are jettisoned the shipowner will be liable to make contribution to the charterer.(*g*) And the result is the same even where the deck cargo is expressed to be carried at merchant's risk, provided the jettison be a proper one.(*h*)

In the United States.

The law in the United States is stated to be that, in general, if goods carried on deck are thrown overboard, no contribution can be claimed, but that a jettison of deck cargo is to be contributed for in general average, where the stowing of the jettisoned article on deck is justifiable, and the other parties interested have notice by the policy, or by usage, or otherwise, that such articles may be so carried, and where there is no plainly established usage negativing the right to claim such contribution.(*i*)

Stowage on deck as affected by statute.

§ 252. Further restrictions have been placed upon the carriage of goods on deck by the Merchant Shipping Act, 1876.(*k*) Sect. 23 of that Act provides, that in the case of ships carrying deck cargo in any uncovered place on deck, or in any covered space not included in the ship's registered tonnage, all dues payable on her tonnage shall be payable as if there were added to her tonnage the tonnage of the space occupied by such goods at the time when the dues became payable. The section also directs the mode of ascertaining such space, and requires the officer of the Board of Trade or Customs who ascertains it, to enter it in the official log, and also in a memorandum which he must deliver to the master, who is required when the dues are demanded to produce it in like manner, and under the same penalty for default, as if it were the certificate of registry.(*l*)

By sect. 24—

(*d*) As to general average, see §§ 243–246 *sup.*, and §§ 295–297 *inf.*

(*e*) *Wright* v. *Marwood*, 7 Q. B. D. 62; *Strang* v. *Scott*, 14 Ap. Ca. 601, 609; Maclachlan, 4th ed. 701 *et seq.*

(*f*) *Milward* v. *Hibbert*, 3 Q. B. 120; *Da Costa* v. *Edmunds*, 4 Camp. 142; *Gould* v. *Oliver*, 4 B. N. C. 134; *Strang* v. *Scott*, *ubi sup.*, per Bramwell, L.J., 7 Q. B. D. at p. 67; Arnould, § 328, p. 904.

(*g*) *Burton* v. *English*, 12 Q. B. D. 218; *Johnson* v. *Chapman*, 19 C. B. N. S. 563, explained in *Wright* v. *Marwood*, 7 Q. B. D. at p. 69.

(*h*) *Burton* v. *English*, *ubi sup.*

(*i*) Phillips on Ins. 1282.

(*k*) 39 & 40 Vict. c. 80.

(*l*) See § 122 *supra*.

Penalty for carrying deck-loads of timber in winter.

If a ship, British or foreign, arrives between the last day of October and the 16th day of April in any year at any port in the United Kingdom, from any port out of the United Kingdom, carrying as deck cargo—that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage—any wood goods coming within the following descriptions (that is to say):

(*a*) Any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatever; or

(*b*) Any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for use; or

(*c*) Any deals, battens, or other light wood goods of any description, to a height exceeding three feet above the deck;

the master of the ship, and also the owner, if he is privy to the offence, shall be liable to a penalty not exceeding five pounds for every hundred cubic feet of wood goods carried in contravention of this section, and such penalty may be recovered by action or on an indictment, or to an amount not exceeding one hundred pounds (whatever may be the maximum penalty recoverable) on summary conviction, provided that a master or owner shall not be liable to any penalty under this section—

(1) In respect of any wood goods which the master has considered it necessary to place or keep on deck during the voyage, on account of the springing of any leak, or of any other damage to the ship received or apprehended; or

(2) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the last day of October as allowed a sufficient interval, according to the ordinary duration of the voyage for the ship to arrive before that day at the said port in the United Kingdom, but was prevented from so arriving by stress of weather or circumstances beyond his control; or

(3) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the 16th day of April as allowed a reasonable interval according to the ordinary duration of the voyage for the ship to arrive after that day at the said port in the United Kingdom, and by reason of an exceptionally favourable voyage arrived before that day.

Provided further, that nothing in this section shall affect any ship not bound to any port in the United Kingdom which comes into any port of the United Kingdom under stress of weather, or for repairs, or for any other purpose than the delivery of her cargo.

Stevedores

§ 253. The duty of loading and unloading the ship and of stowing the cargo used formerly to be generally executed by the master and crew, but the exigencies of modern commerce have created a necessity for the constant employment of a class of persons called "stevedores," who are specially experienced and skilled in stowing and unloading cargo. The latter are not the *servants* of the owner of the ship; but they are persons having a special employment, with entire control over the men employed in the work of loading and unloading.(*m*) In the absence of

(*m*) Per Willes, J., *Murray* v. *Currie*, L. R. 6 C. P. at p. 26.

evidence to the contrary, however, it is to be taken that the stevedore was employed by the shipowner.(*n*)

in general appointed by shipowner.

§ 254. If a stevedore is appointed by the shipper, without any agreement with the shipowner that the stevedore is to be under the master's control, and if the goods are stowed by him without interference on the part of the master, neither the shipowners nor the master are responsible for the consequences of bad stowage.(*o*) On the other hand, a charterer may agree with the shipowner that the charterer may employ a stevedore, who shall be under the control of the master, and that the shipowner shall be responsible for the loading and discharging of the cargo.(*p*) And, inasmuch as the master is by law required to be a competent stevedore himself,(*q*) if the charterer, having the option to appoint a stevedore, fail to do so, that does not dispense with the ordinary duty of the master properly to load and unload the ship. Accordingly, where the charter-party contains the stipulation "*the charterer's stevedore to be employed by the ship*," the stipulation gives the charterers an option to nominate a stevedore if they choose to do so, and it is then the master's duty to employ and pay the stevedore so appointed.(*r*) If they do not choose to do so, the master is bound to care for the proper loading himself.(*s*)

Who is liable for bad stowage, when a stevedore has been appointed by shipper.

When charterer fails to appoint stevedore, having option to do so.

In *Blaikie* v. *Stembridge*, a ship was employed by the charterer as a general ship, and, in pursuance of a clause in the charter-party, a stevedore was "to be appointed by the charterer, and to be paid by and to act under the master's orders. The plaintiff's agent, who was aware of the ship being chartered, saw the broker of the charterer and arranged with him for the freight and carriage of certain sugar pans. Whilst the latter were being hoisted on board, two were broken. The master, who was not on board when the accident happened, in no way interfered, and gave no bills of lading for the goods. The Court held that the clause did not make the master liable for acts of the stevedore not done in pursuance of the master's orders, and that, "as the master is not liable unless in case of a contract made by him, or of some act done by him or the crew for which he is responsible," and no such circumstances existed in this case, he was not liable at all.(*t*)

Blaikie v. *Stembridge*.

§ 255. It has been held at *nisi prius* that, if a person ships goods on board a vessel, knowing that she is chartered, the con-

(*n*) *Faucus* v. *Wilson*, per Willes, J., Newcastle Sum. Assizes, July 16, 1872.

(*o*) *Swainston* v. *Garrick*, 2 L. J. Ex. 255; and see per Willes, J., *Blaikie* v. *Stembridge*, 6 C. B. N. S. p. 908; *The Catherine Chalmers*, 32 L. T. 847.

(*p*) *Sack* v. *Ford*, 13 C. B. N. S. 90; *Harris* v. *Best*, 68 L. T. 76; *supra* § 150, note (*f*); *The Ferro*, (1893) P. 38.

(*q*) Per Willes, J., L. R. 1 C. P. at p. 229.

(*r*) See *Eastman* v. *Harry*, 33 L. T. 800.

(*s*) *Anglo-African Co.* v. *Lamzed*, L. R. 1 C. P. 226.

(*t*) 6 C. B. N. S. 894.

Where charterer appoints stevedore and employs ship as general ship.

signee of the goods cannot maintain an action against the shipowner if they are injured by bad stowage; *à fortiori*, he cannot do so if he is warned of the way which the goods will be stowed, and does not object.(*u*)

But, if a ship is chartered by a charter-party, which does not amount to a demise, and is put up as a general ship by charterer's agents at a foreign port, without any intimation that she is under charter, and goods belonging to a shipper are stowed on board by a stevedore appointed by charterer's agents, and are injured by improper stowage, the shipper has his remedy against the shipowners and master, as the shipper was no party to the employment of the stevedore, and had a right to look to the shipowners and master for the safe stowage as part of their duty as carriers.(*x*)

Sandemann v. *Scurr*.

In *Sandeman* v. *Scurr*, a ship was chartered for a voyage from Oporto to the United Kingdom, to load from the factors of the freighter a full cargo of wine or other merchandise at 18s. a ton; the captain to sign bills of lading at any rate of freight, without prejudice to the charter; the ship to be addressed to charterer's agents at Oporto on usual terms; freight to be paid as per measurement of stevedore. The ship was consigned to the charterer's agents at Oporto, and was put up by them as a general ship, *without any intimation that she was under charter*. The plaintiffs shipped some casks of wine, *and received bills of lading in the common form, signed by the master*. The wine was stowed by a stevedore appointed and paid by the charterer's agents, the money being ultimately repaid them by the master, and afterwards leaked, in consequence of improper stowage. Cockburn, C.J., in delivering judgment, said: (*y*) "There is nothing to release the master and crew from their responsibility in respect of the stowage. We attach no weight to the fact that the stevedores, by whom the cargo was loaded, were appointed by the charterer's agents. The stowage of goods, in the absence of any special agreement, forms part of the obligation which the carrier takes upon himself. It is a duty to be discharged by the master and crew. By this charter, the intervention of a stevedore is only made necessary in order to ascertain the quantity the ship could carry. The stevedores were probably appointed by the charterer's agents for the convenience of the master, the agents being acquainted with the port and knowing who were fit persons to be employed. The expense was ultimately defrayed by the master. The plaintiffs were no parties to the employment of the stevedore."

Who is liable for bad stowage where ship under charter.

§ 256. To sum up the law on this subject: if the goods arrive at the port of destination in a damaged condition, it is for the

(*u*) *Major* v. *White*, 7 C. & P. 41; see, however, Carver, carriage by sea, §§ 156, 157.

(*x*) *Sandeman* v. *Scurr*, L. R. 2 Q. B. 86.

(*y*) L. R. 2 Q. B. at p. 98.

shipowners or master, on an allegation that the damage arose from bad stowage, to prove that the original stowage was good, or, at all events, that the damage arose from some cause for which they are not responsible.(*z*) And, *primâ facie*, where goods have been injured by reason of bad stowage, the shipowners and the master are liable to the shipper, without proof of personal negligence;(*a*) unless it appear that the shipper assented to the manner in which his goods were stowed;(*b*) or that the shipper knew, and the shipowners and master did not know, and could not reasonably be expected to know, the nature of the goods and their liability to injury from the way in which they were stowed;(*c*) or that they were so stowed by the shipper's own stevedore, without any interference on the part of the master;(*d*) or that the injury complained of is excepted by the terms of the contract of carriage.(*e*)

Shipowners and master *primâ facie* liable for damage by bad stowage.

§ 257. When a merchant charters a ship under contract to provide a full and complete cargo, he is bound to load a full cargo, although the ship is larger than she is represented to be in the charter-party, provided such excess is not unreasonable.(*f*) On the other hand, he is not entitled to fill the cabin or to carry passengers,(*g*) or to load the deck with goods, unless there is a stipulation or usage to the contrary, but only to occupy the usual and proper place for stowing cargo; and if he does load the cabin, he is bound to pay a fair and reasonable rate of freight, or the current rate of freight at the time of loading, if that is higher than the chartered freight.(*h*)

A full and complete cargo.

What parts of the ship charterer may fill.

In a case (*i*) where the merchant had agreed to load a full and complete cargo of sugar in bags or hogsheads, and having provided a number of both bags and hogsheads, with which the master had filled the holds, tendered more hogsheads to complete the cargo, it was held that the master was not entitled to insist on receiving more bags, to enable him to fill the alley-ways and lazarette, the hogsheads being too large to be stowed there. And an action against the charterer, for not loading a full cargo, failed. An opinion was further intimated, that under the charter-party in question, which was in the ordinary form, there was no obliga-

(*z*) *The Alexandra*, 14 L. T. N. S. 742; *Norman* v. *Binnington*, 25 Q. B. D. 475.

(*a*) *Swainston* v. *Garrick*, 2 L. J., Ex. 255; per Lord Campbell, *Brass* v. *Maitland*, 6 E. & B. at p. 483; *Gillespie* v. *Thompson*, *ibid.*, 477 n.; *Hayn* v. *Culliford*, 3 C. P. D. 410; 4 *ib.* 182.

(*b*) *Major* v. *White*, 7 C. & P. 41; *Hovill* v. *Stevenson*, 4 C. & P. 469; and see *Mackill* v. *Wright*, 14 Ap. Ca. 106.

(*c*) *Hutchinson* v. *Guion*, 5 C. B. N. S. 149; *Ohrloff* v. *Briscall*, L. R. 1 P. C. 231.

(*d*) *Blaikie* v. *Stembridge*, 6 C. B. N. S. 894; *Swainston* v. *Garrick*, 2 L. J. Ex. 255.

(*e*) *Ohrloff* v. *Briscall*, L. R. 1 P. C. 231.

(*f*) *Thomas* v. *Clarke*, 2 Stark. 452; *Hunter* v. *Fry*, 2 B. & Ald. 421; *Barker* v. *Windle*, 6 E. & B. 675.

(*g*) *Shaw, Savill & Co.* v. *Aitken*, 1 C. & E. 195.

(*h*) *Mitcheson* v. *Nicol*, 7 Ex. 929; *Neill* v. *Ridley*, 9 Ex. 677.

(*i*) *Furness* v. *Tennant*, 66 L. T. 635.

tion, either on the merchant to tender, or on the master to receive, a cargo for stowage in the lazarette.

The obligation to load a full and complete cargo is often qualified by such words as "of about so many tons." In this case the charterer's liability is to load a cargo not exceeding the named quantity by more than a percentage, the amount of which is to be ascertained as a question of fact.(*k*)

Guarantee of carrying capacity.

A corresponding undertaking is frequently given by the shipowner, guaranteeing the ship's carrying capacity at a certain figure. Such an undertaking does not in general mean that the ship can carry the specified quantity of the cargo which the charterer is entitled to tender, but merely warrants her carrying capacity in dead weight, or in cubic feet, as the case may be;(*l*) but it may be otherwise where the precise nature of the contemplated cargo is mutually understood at the date of the undertaking.(*m*)

Master may take goods as ballast.

When a ship is chartered, a shipowner or master may take on board merchandise for freight as ballast, provided it occupies no larger space than the ballast would have done, leaving to the charterer the full capacity of the vessel to be filled with his goods.(*n*) And if passengers are carried, the master is entitled, in the absence of a stipulation in the charter-party, to receive the freight thereby earned, on behalf of the shipowners.(*o*)

How much cargo master may take on board.

It is the duty of the master to take care that more goods are not taken on board than the ship can conveniently and safely carry, leaving room for her own furniture and the provisions of the crew, and for the proper working of the vessel,(*p*) remembering that improper or excessive loading may amount to unseaworthiness, causing forfeiture of insurances.(*q*) He must also comply with the enactments for the prevention of overloading, and not allow her to be so loaded as to submerge in salt water her statutory load line,(*r*) otherwise, as we have seen, he will render himself liable to a penalty of £100.

Statutory load-line.

No prohibited or contraband goods.

It is his duty also to comply with the revenue laws in force at the port of loading, and see that no prohibited or contraband goods are taken on board, whereby the ship and other parts of the cargo may become liable to forfeiture or detention.(*s*)

§ 258. If goods of a dangerous or destructive nature are

(*k*) Three per cent. was allowed in *Morris* v. *Levison*, 1 C. P. D. 155; ten per cent. in *Alcock* v. *Leeuw*, 1 C & E. 98 (petroleum in barrels).

(*l*) *Carnegie* v. *Connor*, 24 Q. B. D. 45; *Mackill* v. *Wright*, 14 Ap. Ca. 106, per Lord Halsbury, C., at p. 114 (not cited in the preceding case).

(*m*) Per Lord Watson, 14 Ap. Ca. at p. 116; per Lord Macnaghten, at p. 120; per Lord Halsbury, C., *ubi sup.*

(*n*) *Towse* v. *Henderson*, 4 Ex. 890; see § 247 *sup.*

(*o*) *Shaw, Savill & Co.* v. *Aitken*, 1 C. & E. 195.

(*p*) Abbott, 13th ed. 391.

(*q*) *Supra* § 138.

(*r*) 39 & 40 Vict. c. 80, ss. 25–28; 53 Vict. c. 9; *supra* §§ 111, 112.

(*s*) Abbott, 13th ed. 391; and see as to smuggling, *Havelock* v. *Hancill*, 3 T. R. 277; as to contraband, *The Sarah Chris-*

delivered to a shipowner or master to be carried, and are so packed as to conceal their real character; or if such goods are delivered to a shipowner or master, and they cannot be reasonably expected to know by inspection that the goods are of such dangerous and destructive nature, it is the duty of the shipper to give due notice of the nature of the goods to the shipowner or those employed by him, and if he does not give such notice, and damage is caused to other parts of the cargo or otherwise, by reason of the dangerous nature of the goods, or the insufficient nature of their packing, the shipper is liable to the shipowner for the damage caused by the dangerous nature of the goods.(*t*) But there is no warranty on the part of the shipper that the goods are fit to be carried on the voyage, at least where their quality is as much known to the shipowner or his agents as to the shipper.(*u*)

Shipper's duty, if he ships dangerous goods.

Consequences of shipper's not giving notice of nature of dangerous goods.

The Merchant Shipping Act, 1873,(*v*) contains some most important provisions to protect masters and shipowners from having dangerous goods handed to them for shipment or carriage without due notice of their dangerous nature, and to enable masters or owners to refuse to take on board packages or parcels which they suspect to contain goods of a dangerous nature, and to throw them overboard if sent aboard without notice.

Restrictions on carriage of dangerous goods.

Section 23 imposes a maximum penalty of £100 on persons sending, carrying, or attempting to send or carry in any vessel any dangerous goods, including aqua-fortis, vitriol, naphtha, benzine and petroleum, and explosives,(*x*) without marking their nature on the outside of the packages, and giving written notice of the nature of the goods, and the sender's or carrier's name and address, to the master or owner of the vessel; with a proviso limiting the penalty to £10 in the case of an innocent agent.

Section 24 imposes a maximum penalty of £500 on persons committing the like offence under a false description of the goods or of the sender or carrier thereof. And sections 27 and 28 empower any Court having Admiralty jurisdiction to declare

tina, 1 C. Rob. 237, 242; *The Staadt Embden*, 1 C. Rob. 26, 30; *The Neptunus*, 6 C. Rob. 403, 408. See also the Customs Acts, 39 & 40 Vict. c. 36, ss. 169 *et seq.*; 50 & 51 Vict. c. 7; 53 & 54 Vict. c. 56; *infra*, Chap. XVII.

(*t*) *Brass* v. *Maitland*, 6 El. & Bl. 470; *Hutchinson* v. *Guion*, 5 C. B. N. S. 149; cp. *Alston* v. *Herring*, 11 Ex. 822; *Williams* v. *The East India Co.*, 3 East, 192.

(*u*) *Acatos* v. *Burns*, 3 Ex. D. 282.

(*v*) 36 & 37 Vict. c. 85.

(*x*) These provisions, and sect. 29 of the Passengers Act, 1855, now apply to every explosive within the meaning of the Explosives Act, 1875 (38 Vict. c. 17, s. 42). These are defined by s. 3 to mean gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect, and to include fog signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined. The list has been extended by Order in Council, under s. 104 (Dec. 29th, 1881), to include picric acid, unless wholly in solution.

Forfeiture.

goods sent in contravention of the foregoing sections forfeited. Sections 25 and 26 enact as follows:

Power to refuse to carry goods suspected of being dangerous.

25. The master or owner of any vessel, British or foreign, may refuse to take on board any package or parcel which he suspects to contain goods of a dangerous nature, and may require it to be opened to ascertain the fact.

Power to throw overboard dangerous goods.

26. Where any dangerous goods as defined in this Act, or any goods which, in the judgment of the master or owner of the vessel, are of a dangerous nature, have been sent or brought aboard any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, the master or owner of the vessel may cause such goods to be thrown overboard, together with any package or receptacle in which they are contained; and neither the master nor the owner of the vessel shall, in respect of such throwing overboard, be subject to any liability, civil or criminal, in any court.

In passenger ships.

By section 29 of the Passengers Act, 1855,(*y*) horses, cattle, and certain other dangerous goods, including explosives, are forbidden to be carried in "passenger ships." The carriage of military stores in such ships may, however, be authorized by a Secretary of State.(*z*)

Grain cargoes.

§ 259. In the case of grain cargo all necessary and reasonable precautions must be taken to prevent its shifting; otherwise the master, and any agent of the owner charged with the loading, and the owner himself, unless he shows that he took all reasonable means to enforce the observance of the law, and was not privy to the breach thereof, becomes liable to a maximum penalty of £300.(*a*) Special precautions are prescribed as reasonable and necessary in the Mediterranean, Black Sea, and North American grain trades, subject to modification by the Board of Trade.(*b*) And in those trades the master is required before sailing to deliver to the British consular officer, or officer of Customs, a notice containing certain particulars, under a maximum penalty of £100 for failure or false statement.(*c*)

Cattle.

Special provisions have also been made with respect to the shipment and carriage of cattle, by Order in Council under the Contagious Diseases (Animals) Act, 1878.(*cc*)

When the Master may sell the Cargo, or part of it.

When master may sell the goods.

§ 260. We have seen (*d*) that in certain cases the master may hypothecate the cargo for the purpose of obtaining the means necessary for the prosecution of the adventure. He may even go further. In case of extreme necessity, when every other ex-

(*y*) 18 & 19 Vict. c. 119; *infra* § 609.
(*z*) 33 & 34 Vict. c. 95, s. 3.
(*a*) 43 & 44 Vict. c. 43. s. 3.
(*b*) *Ibid.* ss. 4, 5. These provisions will be found in the Appendix (No. 5); and see *The Rothbury*, 13 P. D. 119.
(*c*) *Ibid.*, ss. 6, 7; *supra* § 114.
(*cc*) 41 & 42 Vict. c. 74; Animals Order, 1886, c. 24: Appx. No. 2.
(*d*) *Supra* § 237; as to when this may be done, see §§ 445–452 *infra*.

pedient has failed, and every other resource is hopeless; when it is directly or indirectly for the interest of the owner of the goods; and when he cannot communicate with such owner, the law confers upon the master an implied authority to do what is best for the interest of the absent owner, and if necessary to sell a part or the whole of the goods.(*e*) To justify his thus dealing with the goods, he must establish, *first*, a necessity for the sale; and *secondly*, an inability to communicate with the owner and to obtain his directions. Under these conditions, the law makes the master the agent of the owners of the goods, and confers upon him the power and the obligation of acting for them.(*f*) But in no case, where it is not absolutely necessary for the interests of the goods owner, is there any implied authority in the master of an English ship to sell. A sale by him under any other circumstances is simply wrongful,(*g*) rendering him and his owners, if he is acting *bonâ fide* and in the course of his duty to them, liable in an action at the suit of the goods owner for the value of the goods sold.(*h*)

Where cargo perishing in foreign port.

"Suppose," says Lord Stowell, "the case of a ship driven into port with a perishable cargo, where the master could hold no correspondence with the proprietor; suppose the vessel unable to proceed, or to stand in need of repairs to enable her to proceed in time. In such emergencies, the authority of agent of the owners of the cargo is necessarily devolved upon him, unless it could be supposed to be the policy of the law, that the cargo should be left to perish without care. . . . . He must in such case exercise his judgment, whether it would be better to transship the cargo, if he has the means, or to sell it. . . . . He is not absolutely bound to tranship; he may not have the means of transhipment; but even if he has, he may act for the best in deciding to sell. If he had not the means of transhipping, he is under an obligation to sell, unless it could be said that he is under an obligation to let the cargo perish."(*i*)

Where, though not perishable, likely to be destroyed by exposure in foreign port.

The same principles apply, if the cargo, though not of a perishable nature, is likely to be destroyed in a foreign port by exposure through want of accommodation for storing it.(*k*) Where, for instance, goods, such as wool, which have no value but as an article of commerce, have been damaged by sea-water

(*e*) *The Gratitudine*, 3 C. Rob. at p. 259; *Vlierboom* v. *Chapman*, 13 M. & W. 230, 239.

(*f*) *The Australasian, &c., Co.* v. *Morse*, L. R. 4 P. C. 222; and see *Acatos* v. *Burns*, 3 Ex. D. 282.

(*g*) *Van Omeron* v. *Dowick*, 2 Camp. 42; *Acatos* v. *Burns*, *ubi sup.*; *Atlantic Mutual Ins. Co.* v. *Huth*, 16 Ch. D. 474. Where the goods are carried in a foreign ship, the legality of their sale is governed by the law of the flag. *The August*, (1891) P. 328.

(*h*) *Ewbank* v. *Nutting*, 7 C. B. 797; *Tronson* v. *Dent*, 8 Moo. P. C. 419; *Cannan* v. *Meaburn*, 1 Bing. 243.

(*i*) 3 C. Rob. 259. See also *Acatos* v. *Burns*, 3 Ex. D. 282; *Roux* v. *Salvador*, 3 B. N. C. 266; *Notara* v. *Henderson*, L. R. 5 Q. B. at p. 353; 7 Q. B. 225.

(*k*) Maclachlan, 4th ed. 162.

As where damaged by sea-water.

and are deteriorating rapidly; if they can be dried and repacked, and then stored and sent on, but only at a cost to the owner clearly exceeding any possible value of them to him when so treated; and if the master cannot communicate with the owner, so as to obtain an answer within reasonable time, it is plainly his duty to sell.(*l*) But even if the cargo be damaged either in part or wholly, the master cannot sell, if the damaged part could by reasonable exertions be restored to a transportable condition, and conveyed in specie to the port of discharge.(*m*)

Where the ship is a wreck.

§ 261. The fact that the vessel has become a total wreck, or for any other reason is unable to prosecute her voyage, even although a sale of the goods would, under the circumstances, be the most beneficial course for the owners of the cargo, will not justify the master in selling the cargo, if there is a reasonable opportunity of transhipping or storing it.(*n*)

Whether the master is entitled to sell the cargo, in cases where the ship has been wrecked, depends upon whether the cargo can be practically sent in a marketable state to its destination, that is, whether the cost of carrying the cargo to such place will be more than the goods are worth; and in determining this question, all the extra expenses consequent on the perils of the sea, such as drying, landing, warehousing, and re-shipping the goods, may be taken into account; but the fact, that if they are carried on either in the original bottom, or in a substituted bottom, they will have to pay the freight originally contracted to be paid, must not be taken into account, as that is a charge to which the goods are liable when delivered, whether the goods are affected by the perils of the sea or not. It is only the excess of the cost which must be incurred by the owner of the goods, if the master carries them on, above that which would have been incurred by the owner of the goods, if no peril had intervened, which can be taken into consideration by the master.(*o*)

No authority to sell cargo while in wreck, at least until efforts to induce its salvage have failed.

It is doubtful whether the master ever has power to sell the cargo while in the wreck,(*p*) and the difficulty of justifying such a sale becomes necessarily greater where different portions of the cargo belong to different owners, some of it being perishable and some not so; and the chances of recovering different portions being different.(*q*) It is clear, however, that the master ought

(*l*) *The Australasian, &c., Co.* v. *Morse*, L. R. 4 P. C. 222, 230.

(*m*) *Tronson* v. *Dent*, 8 Moo. P. C. 419.

(*n*) Maclachlan, 4th ed. 161; *Freeman* v. *East India Co.*, 5 B. & A. 617; *Cannan* v. *Meaburn*, 1 Bing. 243; *Atlantic Mutual Ins. Co.* v. *Huth*, 16 Ch. D. 474, 481; see also *Wilson* v. *Millar*, 2 Stark. 1; *Van Omeron* v. *Dowick*, 2 Camp. 42.

(*o*) *Farnworth* v. *Hyde*, L. R. 2 C. P. 204, 225; *Rosetto* v. *Gurney*, 11 C. B. 176.

(*p*) *Atlantic Mutual Ins. Co.* v. *Huth*, 16 Ch. D. at p. 480; cp. *Idle* v. *Royal Exchange Co.*, 8 Taunt. 755.

(*q*) 16 Ch. D. at p. 482.

not in any case to sell a cargo, which is not of a perishable nature, while in the wreck, until every effort has been made to obtain the means of himself salving the cargo, or failing this, to induce other persons to undertake its salvage.(*r*)

Where sale is necessary to raise funds for repairs of ship.

§ 262. Where the ship is damaged, and it is for the benefit of the cargo-owners that she should be repaired, and the funds necessary for her repairs cannot be raised otherwise than by a sale of cargo, the master may sell, not the whole, but part only of the cargo, because, as Lord Stowell says, it never can be for the benefit of the owners of the cargo that the whole should be sold to repair a ship, which is to proceed empty to the place of her destination. The law does not attempt to define what proportion of the whole cargo may be sold by the master for repairs. The peculiar necessities of the case and the value of the particular cargo must determine this.(*s*) A sale of cargo for the purpose of repairing the ship is in general a sale on behalf of the shipowner, enabling him, in fact, to borrow money by its means from the cargo-owner, who will, in general, be able to sue the shipowner for the amount so raised, or for the damages which he has sustained by the sale.(*t*)

Master must, if practicable, communicate with owner of goods.

§ 263. Where it is reasonably practicable to correspond with the owner of the goods, no part of them may be sold until after correspondence with him.(*u*) If one of the owners is near and can be easily got at, it is no excuse for not communicating with him, that other owners at a greater distance cannot be consulted. Such communication, however, need only be made when an answer can, or there is a reasonable ground to expect that it can, be obtained, before the necessity for selling will have actually arisen. The master is bound to employ the telegraph as a means of communication where that can be usefully done.(*x*)

By English law purchaser acquires no title if sale is unjustifiable.

Foreign law in some cases confers title.

§ 264. Where no absolute necessity exists, a sale of the cargo, or of any part of it, by the master of an English ship,(*y*) is wrongful, and the purchaser acquires no title under it, unless the sale, if made in this country, be made in market overt; or unless, if made in a foreign country, it be made according to the law by which goods are there disposed of.(*z*) But if cargo is sold or disposed of by the master in a foreign country, in a manner which is binding according to the law of that country, that disposition is

(*r*) 16 Ch. D. at pp. 482, 483.

(*s*) *The Gratitudine*, 3 C. Rob. 240, 263; see also *Richardson* v. *Nourse*, 3 B. & A. 237.

(*t*) See § 327 *inf.*; *Hopper* v. *Burness*, 1 C. P. D. 137, 141, per Brett, J.; *Benson* v. *Duncan*, 3 Ex. 644; 1 Ex. 537; see also per Lord Ellenborough, C.J., *Powell* v. *Gudgeon*, 5 M. & S. at p. 437; *Atkinson* v. *Stephens*, 7 Ex. 567.

(*u*) *Acatos* v. *Burns*, 3 Ex. D. 282.

(*x*) *The Australasian, &c., Co.* v. *Morse*, L. R. 4 P. C. 222, 233–235.

(*y*) In determining the propriety of the sale the law of the flag will be looked at. *The August*, (1891) P. 328.

(*z*) *Freeman* v. *The East India Co.*, 5 B. & A. 617; *Atlantic Mutual Ins. Co.* v. *Huth*, 16 Ch. D. 474.

Where goods sold according to law of foreign country.

binding in this country, although there was no necessity for the sale.(*a*) Where, for example, a ship and cargo were sold under the orders of a foreign court of competent jurisdiction, and under circumstances which, by the law of the country where the sale took place, conferred a title upon an innocent purchaser, and passed the property, this sale was upheld by our courts, although no such necessity as is required by our law existed to justify the master in selling.(*b*)

Law of United States. Where master unable to sell.

It has been held in the United States, that if a master is unable to sell the cargo, he may leave it with a commission merchant in good credit, and that he is not obliged to bring it home.(*c*)

When the Master should tranship the Cargo:

As Agent for the Shipowner.

When his duty to repair ship.

§ 265. When the ship is in distress in a foreign port, and the master is unable to convey the cargo any further in her, it is often a question whether he ought not to tranship the goods, and forward them in some other vessel. In such cases, the master may sometimes be called upon to act as agent for the shipowner, and sometimes as agent for the owner of the goods, and according to the character in which he acts, his powers and duties will be regulated.

It must be remembered that if the owner of the cargo is compelled against his will to take the cargo at an intermediate port, no freight is payable.(*d*) If, therefore, the master can repair his ship at an expense not ruinous, and so complete his voyage and bring home the cargo and earn the freight, it is clearly his duty to the shipowner to do so;(*e*) and for such purpose, as we have seen, he may, if necessary, raise money by hypothecating the ship, freight and cargo, or even by selling part of the cargo.(*f*) And if the latter is not of a perishable nature, he may detain it a reasonable time until his ship is ready to proceed on her voyage;(*g*) or if his ship cannot carry the goods on, he may leave goods which are not perishable, or sell goods which are in their nature perishable and cannot be carried on.(*h*)

(*a*) Per Pollock, C.B., *Cammell* v. *Sewell*, 3 H. & N. 617, at p. 638; per Crompton, J., S. C., 5 H. & N. 728, 744; per Bramwell, B., *Castrique* v. *Imrie*, 8 C. B. N. S. at p. 430; and see per Blackburn, J., S. C., L. R. 4 H. L. 429.

(*b*) *Cammell* v. *Sewell*, *ubi sup.*

(*c*) 2 Parsons, Sh. 21.

(*d*) *The Soblomsten*, L. R. 1 Ad. 293; *infra* § 272.

(*e*) Per Alderson, B., *Benson* v. *Chapman*, 2 H. L. Cas. 696, 720; *The Hamburg*, B & L. 253.

(*f*) *Supra* §§ 260–264. See Hypothecation, Chap. IX.

(*g*) *The Gratitudine*, 3 C. Rob. at p. 261; *The Cargo ex Galam*, B. & L. 167; *The Bahia*, *ib.* 292; *The Soblomsten*, L. R. 1 Ad. 293; *supra* § 237.

(*h*) *Tronson* v. *Dent*, 8 Moo. P. C. at pp. 455, 6; *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 231; *supra* § 240.

When master may tranship as agent for the shipowner.

§ 266. Where a ship is so much damaged by perils of the sea as to be incapable of repair so as to prosecute the voyage, except at an expense exceeding both her value when repaired and the freight, the master is justified in abandoning the voyage; and is not obliged, as agent of the shipowner, to tranship or to send the goods on in another bottom.(*i*) But in such cases he is at liberty to tranship, either in port, or, if the opportunity occur and the occasion be pressing, on the high seas.(*k*) And he will be protected in doing so, if it turns out, in the opinion of the jury, that it was the proper course of dealing with the goods.(*l*) It would seem, however, that his authority to tranship as agent of the shipowner, is confined to cases where he can forward the goods to their port of destination on such terms as would make it expedient and advantageous for the shipowner to complete the conveyance to such port.(*ll*) But where a shipowner has contracted to carry goods to a port in a particular ship, and the master is prevented from so doing by some disaster to her,(*m*) such that either she cannot be repaired at all or not without unusual loss of time,(*n*) whereas the goods might be transhipped and forwarded to their destination at a rate not higher than that which was agreed in the original contract, the master is at liberty, as agent of the shipowner, to tranship the goods and forward them to their destination in a substituted bottom, and to earn the freight under his contract with such shippers, and there is nothing to prevent his doing this upon as advantageous terms as he can make for the shipowners.(*o*) If, in short, the shipowner or master, under the circumstances authorising him to tranship the goods, is enabled to convey them at a lower rate of freight than that agreed on with the shipper, there is no objection to the shipowner having the benefit.(*p*)

Not authorised to tranship at a loss to shipowner.

Shipowner may profit by transhipment.

Therefore, where a master entered into a contract by charter-party to forward goods from a port of distress for the same amount of freight as his owners had stipulated for in the original charter-party, but by a private and subordinate agreement between himself and the owner of the substituted vessel, stipulated that while the freight mentioned in the charter-party should be required from the consignees, the owner was to hand over to him the difference between that freight and a lower rate of freight

(*i*) *De Cuadra* v. *Swann*, 16 C. B. N. S. 772; Abbott, 13th ed. 411; *Tronson* v. *Dent* and *Notara* v. *Henderson*, *ubi sup.*

(*k*) Abbott, 13th ed. 411; *Shipton* v. *Thornton*, 9 A. & E. 314.

(*l*) *Tronson* v. *Dent*, 8 Moo. P. C. at pp. 455, 456; *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 231; *supra* § 240.

(*ll*) *Shipton* v. *Thornton*, 9 A. & E. 314.

(*m*) *Matthews* v. *Gibbs*, 3 E. & E. 300.

(*n*) *Shipton* v. *Thornton*, 9 Ad. & El. 314; *Luke* v. *Lyde*, 2 Burr. 883, 888.

(*o*) *Matthews* v. *Gibbs*, 3 El. & El. 282, 300; per Cockburn, C.J. As to the shipowner's liability in case the goods are lost while on board substituted ship, see *The Bernina*, 12 P. D. 36.

(*p*) Per Cockburn, C.J., 3 El. & El. at p. 301.

agreed upon between them, but whether for the benefit of the master or his owners did not appear, it was held, that the contract, if entered into by the master on behalf of his owners, would be a perfectly legitimate transaction; but that if it was made by him as agent of the owners of the goods, it would be fraudulent and binding upon them.(*q*)

When he should tranship as Agent of the Cargo-owner.

At liberty where beneficial to cargo-owners.

§ 267. Even when it is not expedient for the master, as agent of the shipowners, to tranship, it may be greatly for the benefit of the owner of the goods that they should be transhipped and forwarded to their destination, even at an increased rate. In such cases, the master has authority, as agent *ex necessitate*(*r*) for the owner of the goods, if he cannot communicate with such owner or his agent,(*s*) to tranship and forward them, in which case such owner will be liable for any increased freight.(*t*) Where, on the other hand, it is possible to communicate with the cargo-owner or his agent, this must be done;(*s*) so as to give him an opportunity, if so disposed, of taking delivery at the port of distress.(*u*)

But not bound.

But, although he may have authority to tranship, if the circumstances render such a course expedient for the owners of the cargo, he is not, in any case, absolutely bound to do so.(*x*)

As agent for the owners of the cargo.

In determining whether to sell or tranship, the master should as far as possible, act as the owner would if he were present. And if, under all the circumstances, a prudent owner would tranship rather than sell, the master ought to tranship.(*y*)

Duty to make best bargain possible.

If when the master transhipps, he is acting as the agent, not of the shipowners but of the owners of the goods, it becomes his duty to do the best he can for the interest of the latter, and to make the best bargain he can for them and not for the shipowners, for the conveyance of the goods. The implied authority of the master as agent for the owners of the cargo is limited by the necessity of the case. Although therefore there may be a necessity to tranship, as agent of the owners of the cargo, still, unless there should be a necessity to pay a higher rate of freight than the current rate, the master cannot bind the owner of the cargo to make such a payment.(*z*) And it is clearly beyond the master's

(*q*) *Matthews* v. *Gibbs*, 3 E. & E. 282.

(*r*) See § 238 *supra*.

(*s*) *Gibbs* v. *Grey*, 2 H. & N. 32; and cases *supra* §§ 238–242.

(*t*) *Shipton* v. *Thornton*, 9 Ad. & El. 314, 337, per Lord Denman, C.J.

(*u*) As to when, and how much, freight is payable on goods delivered at a port short of their destination, see §§ 283–285 *infra*.

(*x*) *The Bahia*, B. & L. 292, 305; *The Hamburg*, B. & L. 253.

(*y*) *Notara* v. *Henderson*, L. R. 5 Q. B. 346, 353; 7 Q. B. 225. As to the considerations applicable in such a case, see per Lord Stowell, *The Gratitudine*, 3 C. Rob. at p. 259.

(*z*) *Matthews* v. *Gibbs*, 3 El. & El. 282; *Gibbs* v. *Grey*, 2 H. & N. 22, 32, 33.

authority, when he tranships, to bind the owner of the cargo to pay dead freight.(*a*)

Freight: What it is and when it is payable.

Freight.

Shipper under contract to pay it.

§ 268. "Freight" is the reward payable to the shipowners or master for the safe carriage of the goods. There is in every case, unless the contrary be stipulated, a contract for the payment of freight on the part of the shipper or consignor. Where he is also the charterer, this contract is—in the absence of a cesser clause (*b*)—expressed in the charter-party; in other cases it is implied from the fact of his putting the goods on board to be carried.(*c*) In neither case is he relieved from liability by the fact that the master has delivered the goods without first reqniring payment of the freight.(*d*)

Consignee or indorsee of bill of lading.

Receiver of the goods.

The consignee or indorsee of the bill of lading, to whom the property in the goods passes "upon or by reason of such consignment or indorsement," becomes liable under the Bills of Lading Act, 1855,(*e*) upon the contracts contained in the bill, including that for the payment of freight. And apart from that Act, the receipt of goods under a bill of lading is evidence of a contract to be bound by the terms of the bill, the consideration for such a contract being the abandonment of the shipowner's lien upon the goods;(*f*) but such evidence is not conclusive,(*g*) and may be rebutted, for example, by showing that the receiver of the goods, on presenting the bill of lading, refused to be bound by those terms.(*h*) A contract by the receiver of the goods to pay the freight may also be inferred from a previous course of dealing between the parties, though the receipt was not under the bill of lading.(*i*)

When payable: on readiness to deliver at destination.

§ 269. Freight is payable on the arrival (*k*) of the goods at the destined port ready to be delivered. In other words, the readiness to deliver at the port of destination is, speaking generally, a condition precedent to the payment of freight. The consignee may, however, dispense with performance of this condition, either by accepting the goods at an intermediate port, or by rendering performance impossible. Thus, if the goods are

(*a*) *Matthews* v. *Gibbs*, 3 El. & El. 282; *Gibbs* v. *Grey*, 2 H. & N. 22, 32, 33.

(*b*) See § 308 *infra*.

(*c*) *Domett* v. *Beckford*, 5 B. & Ad. 521, 524.

(*d*) *Shepard* v. *De Bernales*, 13 East, 565; *Christy* v. *Row*, 1 Taunt. 300; *Tapley* v. *Martens*, 8 T. R. 451; *Domett* v. *Beckford*, *ubi sup.*

(*e*) 18 & 19 Vict. c. 111; *infra* § 350.

(*f*) *Cock* v. *Taylor*, 13 East, 399; *Bell* v. *Kymer*, 3 Camp. 545; per Parke, B., *Moeller* v. *Young*, 5 E. & B. 755, 760; and see § 156 *supra* and § 309 *infra*.

(*g*) *Sanders* v. *Vanzeller*, 4 Q. B. 260, per Tindal, C.J., p. 295; *Moeller* v. *Young*, *ubi sup.*

(*h*) "*County of Lancaster*" *S.S.* v. *Sharp*, 24 Q. B. D. 158.

(*i*) *Wilson* v. *Kymer*, 1 M. & S. 157; *Coleman* v. *Lambert*, 5 M. & W. 502. As to the subject of this paragraph generally, see Carver, Carriage by Sea, 603, 604.

(*k*) As to what is "arrival," see §§ 158-161 *supra*.

When payable.

lost in the course of the voyage,(*l*) or if their owner is compelled against his will to receive them at an intermediate port,(*m*) no freight is payable; while, on the other hand, freight may be earned before actual delivery of the goods, if they have been brought to the port of arrival ready to be delivered according to the bill of lading.(*n*)

Carriage prevented by cargo-owner.

If, after the cargo is received on board, and the ship is ready to earn freight, the master is prevented from carrying the cargo by the act or default of the cargo-owner, full freight is recoverable.(*o*) But the mere fact that the failure to complete the voyage was due to the unfitness of the cargo to be carried, will not entitle the shipowner to freight, or to damages, at all events in a case where the condition of the cargo at the time of shipment was as much within the knowledge of the shipowner or his agents as of the shipper.(*p*)

No freight on illegal voyage.

Freight cannot be recovered if the voyage is illegal, even though it has been performed and the cargo landed.(*q*)

Test of right to freight.

Speaking generally, however, the true test of the right to freight is the question whether the service in respect of which the freight was contracted to be paid has been substantially performed. As a rule, freight is earned by the carriage and arrival of the goods ready to be delivered to the merchant, though they be in a damaged state when they arrive. If the shipowner fail to carry the goods for the merchant to the destined port, the freight is not earned.(*r*) If he carry *part*, but not *the whole*, no freight is payable in respect of the *part not carried*, but freight is payable in respect of the *part carried*, unless, indeed, the charter-party make the carriage of the whole a condition precedent to the earning of any freight, a case which rarely, if ever, arises in practice.(*s*)

"On right delivery." Meaning of.

Where a charter-party provided that freight should be paid, "one-third cash on arrival and the remainder on right delivery of the cargo," it was held that the delivery of the cargo and the payment of the residue of the freight were concurrent acts, and that therefore the shipowner, on being ready and willing to deliver, was entitled to be paid the freight, and that he was not

(*l*) See per Lord Kingsdown, *Kirchner* v. *Venus*, 12 Moo. P. C. 361, 390; *Mashiter* v. *Buller*, 1 Camp. 84.

(*m*) *The Soblomsten*, L. R. 1 Ad. 293, 297; *Vlierboom* v. *Chapman*, 13 M. & W. 230; *Metcalfe* v. *Britannia Ironworks*, 2 Q. B. D. 423; *Castel* v. *Trechman*, 1 C. & E. 276. As to when *pro ratâ* freight is payable at an intermediate port, see *infra* §§ 283–285.

(*n*) *Cargo ex Argos*, L. R. 5 P. C. 134, 159.

(*o*) *Cargo ex Galam*, B. & L. 167, 178.

(*p*) *Acatos* v. *Burns*, 3 Ex. D. 282.

(*q*) *Blanck* v. *Solly*, 1 J. B. Moore, 531; *Muller* v. *Gernon*, 3 Taunt, 394.

(*r*) See per Willes, J., *Dakin* v. *Oxley*, 15 C. B. N. S. 646, 665; see also *Smith* v. *Wilson*, 8 East, 437; *Liddard* v. *Lopes*, 10 *ib.* 526.

(*s*) Per Willes, J., *ubi sup.*

bound to deliver the cargo before payment.(*t*) And the same rule was followed where a bill of lading specified the rate of freight, without expressly providing for its payment.(*u*)

Readiness to deliver essential.

Arrival at the port of destination is not alone sufficient, even where it is stipulated that freight is to be payable before delivery. It must be accompanied by a readiness to deliver. Therefore, where goods were shipped under a bill of lading, which stipulated that freight should be paid "within three days after arrival of the ship and *before* delivery of any portion of the goods," and the ship arrived in port with the goods on board, and was, within the three days, in consequence of an accidental fire, scuttled and the goods destroyed; it was held, that the shipowners, not being ready to perform their part of the contract, were not entitled to sue for freight.(*x*)

When goods ready to be delivered cannot be landed at port of destination.

§ 270. On the other hand, if the ship arrives and is ready to deliver at her foreign port of destination, and the authorities there will not permit the goods to be landed, or the ship to remain in the port, and the master cannot communicate with the owner of the goods, or obtain instructions from him, he is justified, under his implied authority, to act for the owner of the goods and for the shipowners, in carrying or sending the goods to such other place as in his judgment, prudently exercised, appears to be most convenient for their owner; and if the best and cheapest way of making them available to the owner, is by bringing the goods back to England, then the master will be justified in doing so, and in such case he will be entitled to freight as well as to back freight and expenses reasonably incurred.

This was determined in the case of *The Cargo ex Argos*.(*y*) G.'s ship, with a general cargo, sailed from London to Havre with some petroleum on board. Under the bill of lading, G. was to deliver the petroleum at Havre, and it was to be taken out by the consignee within twenty-four hours after arriving at Havre, or ten guineas a-day was to be paid for demurrage. On the ship's arriving at Havre, the authorities of the port obliged the master to take her away in consequence of the petroleum being on board. Thereupon, the master went to neighbouring ports, but was not allowed to stay there. He then returned to Havre, discharged his general cargo, and obtained permission to discharge the petroleum, but not to land it. But no bill of lading having

(*t*) *Paynter* v. *James*, 18 L. T. N. S. 449, affg. S. C., L. R. 2 C. P. 348; see also *Black* v. *Rose*, 2 Moo. P. C. N. S. 277; *The Energie*, L. R. 6 P. C. 306, 314.

(*u*) *Weguelin* v. *Cellier*, L. R. 6 H. L. 286.

(*x*) *Duthie* v. *Hilton*, L. R. 4 C. P. 138. See also *Storer* v. *Gordon*, 3 M. & S. 308. In *Stewart* v. *Rogerson* (L. R. 6 C. P. 424), the ship and cargo (as security for the freight) being under arrest by the Admiralty Court, the shipowner was allowed to recover the amount of his freight, as damages for refusal to accept the cargo.

(*y*) L. R. 5 P. C. 134, 157; reported below, L. R. 4 A. & E. 13. See also *The Teutonia*, L. R. 4 P. C. 171 *infra*.

When it is payable.

been presented to him, and no application made for the delivery of the petroleum, he brought it back to London. It was held, that under these circumstances the shipowner was entitled to freight and back-freight, and to expenses incurred on behalf of the cargo-owner after his second arrival at Havre; but not to demurrage and expenses in attempting to enter neighbouring ports, for they were incurred before the ship was ready to deliver at Havre.

A somewhat similar case was that of *The Teutonia*.(z) There a charter-party, which was referred to in the bill of lading, provided that the ship should deliver her cargo at a safe port within a named area, as ordered by charterer's agents. She was ordered to Dunkirk, a port which afterwards became unsafe by reason of the outbreak of war. On arriving at Dunkirk and learning the state of affairs, her master proceeded to Dover, another port within the named area. No further orders were given as to her port of discharge, and the consignees required delivery of the cargo at Dover. It was held that the master was not bound to deliver except upon payment of his full freight.

For animals which die on voyage.

§ 271. Although readiness to deliver the goods at the place of destination is, in general, necessary to entitle the shipowner or master to the freight, yet with respect to living animals, which may die during the voyage, without fault or neglect on the part of shipowner or his servants, it is said, that if there is no express agreement whether the reward is to be paid for lading, or for transporting them, freight is payable as well for the dead as for the living; and the same principle is applied to passengers.(a) If the agreement was to pay for lading and undertaking to carry them, their death will not deprive the shipowners or master of the reward. But if the agreement was to pay freight for transporting them, then no freight is due for those that die on the voyage, because as to them the contract is not performed.(b)

When ship is disabled.

§ 272. If the ship be prevented from completing her voyage, the master may, as we have seen, still earn the whole freight which he originally contracted for, either by repairing her and, within a reasonable time, carrying on the goods, or by sending them, within a reasonable time, in another ship, to the place of their destination, if either of these courses be practicable.(c) If he is unable or unwilling to do this, the merchant is entitled to take the goods without payment of freight, the contract not having been performed,(d) and the case is the same where the

(z) L. R. 4 P. C. 171; below, L. R. 3 Ad. 394. See the facts more fully stated § 277 *supra*.

(a) As to passengers, see *Moffat* v. *East India Co.*, 10 East, 468, and Chap. XIII. *infra*.

(b) Maclachlan, 4th ed. 490; Molloy, bk. 2, c. 4, s. 8.

(c) *Supra* §§ 265, 266.

(d) See *Cargo ex Galam*, B. & L. 167, 178; *Metcalfe* v. *Britannia Ironworks Co.*, 1 Q. B. D. 613; 2 *ib.* 423.

vessel has been properly abandoned without any intention of resumption, and is subsequently brought into port by salvors;(e) but it seems that a wrongful abandonment, giving a cause of action to the cargo-owner, does not put an end to the contract of affreightment, and does not entitle him to delivery of the cargo without tendering any freight.(f) On the other hand, if the merchant refuse to allow a reasonable time for repairs, or for the transmission of the goods by another ship, and demand his goods at once, he must pay the whole freight, as he has prevented the performance of the contract.(g)

When it is payable.

If the master is compelled to sell the cargo at an intermediate port, no freight will become due. In such a case, it cannot be inferred that the owners of the goods through the master's agency agreed to dispense with their further carriage and accept delivery at the intermediate port, for the agency of the master arises from his inability to carry the goods to their place of destination, giving the goods owners no alternative.(h)

When master sells the cargo.

§ 273. If the outward and the homeward voyages are intended by the contract to be distinct, then the freight for the outward voyage will become due upon its completion, and will not be affected by the non-completion of the homeward voyage. Whether the outward and homeward voyages are to be regarded as one or as distinct voyages depends entirely on the terms of the contract.(i)

When outward and homeward voyages distinct.

§ 274. If the goods have substantially arrived, although damaged, and are ready to be delivered, the freight is payable by the ordinary terms of the contract, and the owner is not entitled to abandon them, or to resist the payment of freight, on the ground of their being damaged, even if they have become, by reason of such damage worth less than the freight, unless, indeed, there is some stipulation to this effect in the contract. Such injury to the goods, if caused by the negligence of the master, being only ground for a cross action or counterclaim against ship, master, or owners.(k)

On damaged goods.

Where it is agreed that the ship shall load a complete cargo

On short delivery.

(e) *The Kathleen*, L. R. 4 Ad. 269; *The Cito*, 7 P. D. 5; disting. *The Leptir*, 52 L. T. N. S. 768; see § 284 *infra*.

(f) Per Brett, L. J., 7 P. D. p. 8; per Butt, J., 52 L. T. N. S. 769.

(g) *The Soblomsten*, L. R. 1 Ad. 293; *Luke* v. *Lyde*, 2 Burr. 883; *The Cargo ex Galam*, B. & L. 167; and see cases cited *infra* § 283.

(h) *Vlierbloom* v. *Chapman*, 13 M. & W. 230; *Hopper* v. *Burness*, 1 C. P. D. 137; *Acatos* v. *Burns*, 3 Ex. D. 282.

(i) *Smith* v. *Wilson*, 8 East, 437; *Crozier* v. *Smith*, 1 M. & Gr. 407; *De Silvale* v. *Kendall*, 4 M. & S. 37.

(k) *Dakin* v. *Oxley*, 15 C. B. N. S. 646; *Garrett* v. *Melhuish*, 4 Jur. N. S. 943; *Shields* v. *Davis*, 6 Taunt. 65; see also cases cited *infra* § 282. "There would be apparent justice in allowing damage of this sort to be set off or deducted in an action for freight, and this is allowed in some (at least) of the United States. (Parsons on Mercantile Law, 172, n.) But our law does not allow deduction in that form," per Willes, J., 15 C. B. N. S. 667.

Where delivery short: Freight payable in quantity delivered.

and deliver the same on being paid freight, and after receiving a portion of her cargo she sails without waiting to complete her loading, the delivery of a complete cargo is not a condition precedent to the payment of freight, but the master may recover freight for the short cargo at the stipulated rate per ton, the freighter having his remedy in damages for the breach of the agreement.(*l*) For otherwise, though he had carried a cargo short of the full capacity of the ship by only a few tons, the shipowner would be deprived of his whole freight, a construction which would be contrary to common sense.(*m*)

Short delivery due to excepted perils: Lump sum freight payable in full.

In *The Merchant Shipping Company* v. *Armitage*, the ship was chartered to load at Colombo, or Cochin, from the charterer's agents, a full and complete lading, and proceed to London and discharge there, fire and other dangers of the sea excepted, and a lump sum freight of £5000 was to be paid after entire discharge and right delivery of the cargo, in cash, two months after the date of ship's report inward at the Custom House. Part of the cargo loaded was lost by fire, without any default of the master or crew, and the remainder was delivered in London. It was held, that the shipowner was entitled, under the charter-party, to the full lump sum freight of £5000.(*n*) It would seem to be an open question whether, if the loss had been due to a cause for which the shipowner was responsible, the whole freight would not have been equally payable, as the sum agreed for the hire of the ship.(*o*)

When made payable at fixed periods.

§ 275. Where freight is made payable by the contract at a fixed rate for a fixed period, as at so much per month, week, &c., the general rule is, that freight accrues due at the expiration of each of the periods specified and continues payable if the ship is detained during the voyage, provided such detention does not discontinue the voyage or suspend the contract, and does not proceed from the default of the shipowner.(*p*)

Subject to performance of condition.

But the obligation to pay freight under a time charter must in each case depend upon the terms of the contract.(*q*) Thus, although the charter-party may fix the rate of freight by the week, month, &c., as a means of ascertaining the amount of

(*l*) *Ritchie* v. *Atkinson*, 10 East, 295.

(*m*) Per Lord Ellenborough, 10 East, 307.

(*n*) L. R. 9 Q. B. 99; affg. L. R. 8 C. P. 469, n.; see also *The Norway*, B & L. 377, 404; *Robinson* v. *Knights*, L. R. 8 C. P. 465; *Blanchet* v. *Powell's, &c.*, L. R. 9 Ex. 74.

(*o*) See, on the one hand, per the Judicial Committee, B. & L. at pp. 408, 9; and per Keating and Brett, J.J., L. R. 8 C. P. at pp. 467, 468; on the other, per Lord Coleridge, C.J., and Bramwell, B., L. R. 9 Q. B. pp. 107, 111. Dr. Lushington, in *The Norway*, as a judge of first instance, held that under such circumstances the freight would be apportionable; B. & L. at pp. 394, 395; see Carver, § 550.

(*p*) *Havelock* v. *Geddes*, 10 East, 555; *Moorsom* v. *Greaves*, 2 Camp. 627; *Ripley* v. *Scaife*, 5 B. & C. 167. As to how much freight is payable, see further § 281 *infra*.

(*q*) See for example, *Hogarth* v. *Miller*, (1891) A. C. 48; *The Alps*, (1893) P. 109.

freight ultimately payable, the parties may still by the same contract agree that the voyage or any other condition shall be performed before any freight is due. In that case no freight becomes due until the condition has been performed, unless indeed its performance is dispensed with, or rendered impossible by the act of the charterer. Where, for example, the freighter by charter-party agreed to pay freight for the use of the ship at a certain rate per ton, per month, during the term of six months at least, and so in proportion for a less time than a whole month, and at the like rate for such further time, and until her final discharge in London, or up to the day of her being lost, captured, or last seen or heard of—such freight to be paid to the master in cash, in the following manner: so much as might be earned at the time of the arrival of the ship at her first destined port abroad, to be paid within ten days next after such arrival, and the remainder at certain specified periods; and the ship was lost by perils of the sea before her arrival at her first destined port, it was held that no freight was due.(*r*)

Where payable for fixed periods.

When Freight so-called is payable in advance.

§ 276. Of course the shippers may agree to pay what is often called freight (*s*) in advance. If the parties make a distinct contract to this effect, so that it is apparent that the prepayment is an advance of freight and not a loan, such money cannot be recovered back if the voyage fails or the ship or goods are lost, unless there was a distinct agreement that it should be so returned, such payment being considered to be by the intention of the parties exempt as between themselves from the risk and contingency incident to freight at common law.(*t*)

Freight in advance cannot as such be recovered back.

But where, freight having been advanced, the goods are lost by reason of some cause for which the shipowner is responsible, the amount of the advance may be taken into consideration in estimating the damages recoverable by the merchant, the measure of which is the value of the goods at the place of destination, less any sums which must be paid by the consignee in order to obtain them. So much of the freight as has been advanced cannot be

But may in some cases be indirectly recovered as damages.

(*r*) *Gibbon* v. *Mendez*, 2 B. & Ald. 17.

(*s*) As to whether properly so-called, see *Allison* v. *Bristol Marine Ins. Co.*, 1 Ap. Ca. 209, 225, 239, 240; *Smith* v. *Pyman*, (1891) 1 Q. B. 742, 745; *Kirchner* v. *Venus*, 12 Moo. P. C. 361, 390; *infra* §§ 290, 291.

(*t*) *Andrew* v. *Moorhouse*, 5 Taunt. 435; *De Silvale* v. *Kendall*, 4 M. & S. 37; *Saunders* v. *Drew*, 3 B. & Ad. 445; *Byrne* v. *Schiller*, L. R. 6 Ex. 20, 319. In *Byrne* v. *Schiller*, at p. 322, Cockburn, C.J., says, "By the law of England a payment made in advance on account of freight cannot be recovered back in the event of the goods being lost, and the freight thereof not becoming payable. I regret that the law is so. I think it founded on an erroneous principle, and anything but satisfactory; and I am emboldened to say this, by finding that the American authorities have settled the law upon directly opposite principles, and that the law of every European country is in conformity with the American doctrine and contrary to ours. In France and Germany the rule has been settled for a long time." See 1 Parsons, Sh. 210.

required of the consignee,(*u*) and therefore is not to be deducted from the value of the goods in estimating the damages.(*x*)

But loan may.

Unless charterers have agreed to insure and failed to do so.

An advance by the charterer by way of loan may be recovered, even though stipulated in the charter-party;(*y*) unless it is also stipulated that the advance is to be made against freight, and that the charterers are to be entitled to insure it at the shipowner's expense, and they have, without notice to the latter, failed to do so.(*z*) And the question has frequently been raised whether, according to the terms of the contract under which payment was made, it was to be regarded as a loan or as an advance of freight.(*a*)

Whether payable in advance, question of the contract.

The question whether freight is payable in advance or not, must also depend in each case upon the terms of the particular contract. It is not necessarily payable in advance, because agreed to be paid at the port of loading.(*b*) In such a case it may be a question for the jury, looking at all the circumstances,(*c*) whether the contract was one for "freight" contingent on the ship's arrival at her destination, or for a sum payable on the receipt of the goods on board.

Advance freight payable notwithstanding loss of ship.

§ 277. Where freight is according to the agreement payable in advance, when once the cargo has been shipped, or other condition performed upon which it is to become payable, the freighter's liability to pay is not affected by the subsequent loss of the ship. Where, for example, a ship was lost on a voyage from London to the Cape, and the words in the bill of lading were, "*freight for the said goods being paid,*" and the broker who freighted the ship told the owner of the goods that the freight was a certain sum per ton if paid in London, and a larger sum if paid at the Cape, and the owner preferred the contract at the lower rate, a finding of the jury that it was intended that the lesser sum, if elected, was to be paid at all events, and on the taking of the goods on board, was upheld.(*d*)

Exception.

But where the agreement was "one-third freight, if required to be advanced, less 3 per cent. for interest and insurance," and no requirement was made until after the loss of the vessel, it was

(*u*) See *Tamvaco* v. *Simpson*, L. R. 1 C. P. 363.

(*x*) *Great Indian Peninsula Ry.* v. *Turnbull*, 53 L. T. N. S. 325; *Dufourcet* v. *Bishop*, 18 Q. B. D. 373; and see *Rodoconachi* v. *Milburn*, *ib.* 67.

(*y*) *De Silvale* v. *Kendall*, 4 M. & S. 37, 42, 43.

(*z*) *Watson* v. *Shankland*, L. R. 2 H. L. Sc. 304; cp. *Hicks* v. *Shield*, 7 E. & B. 633.

(*a*) In *Manfield* v. *Maitland*, 4 B. & Ald. 582, the payment was held to be a loan. In *De Silvale* v. *Kendall*, 4 M. & S. 37, *Hicks* v. *Shield*, 7 E. & B. 633, and *Tamvaco* v. *Simpson*, L. R. 1 C. P. 363, it was held to be an advance of freight. In *Watson* v. *Shankland*, L. R. 2 H. L. Sc. 304, this question was not determined.

(*b*) See *Mashiter* v. *Buller*, 1 Camp. 84.

(*c*) *Lidgett* v. *Perrin*, 11 C. B. N. S. 362; *Andrew* v. *Moorhouse*, 5 Taunt. 435, 444.

(*d*) *Andrew* v. *Moorhouse*, *ubi sup.* Cp. *Jackson* v. *Isaacs*, 3 H. & N. 405; per Lord Esher, M.R., *Smith* v. *Pyman*, (1891) 1 Q. B. at p. 744.

held that the advance freight could not be recovered; for until the requirement was made, the charterer was not liable to pay it, and therefore had no insurable interest in it, and when the requirement was made, the advance freight had already become uninsurable by reason of the loss of the vessel.(*e*)

Payable on sailing of ship. When has ship "sailed."

§ 278. In cases where the freight is to be paid "on the final sailing of the ship," or "on the ship having sailed," the question frequently arises whether the ship has in fact sailed so as to entitle the shipowner to payment. "Final sailing means getting clear of the port for the purpose of proceeding on the voyage."(*f*)

In *Thompson* v. *Gillespy*, one-fourth of the freight was to be advanced "*on the ship having sailed.*" The ship left the harbour and proceeded into the roads with the intention of lying there, but with no intention of returning. There she cast anchor and was lost. Her shrouds and cables were not in a proper condition for sailing; the master and mate were not on board, nor was the crew complete, nor the bills of lading signed. It was held that the ship had not sailed, and that no freight was due.(*g*)

The most recent case on this subject was *Sailing Ship Garston Co.* v. *Hickie.*(*h*) There the ship was to load at Cardiff, "freight to be paid two-thirds in cash . . . . ten days after the final sailing of the vessel from her last port in Great Britain." The docks at Cardiff communicate with the river Taff, and so with the sea, by means of a ship canal, along which all vessels must pass in order to enter or leave the docks. Having passed through the canal, and proceeded about 300 yards beyond its junction with the river, the ship came into collision, and was compelled to put back. In an action by the shipowners for advance freight, it was held that it was not recoverable, the ship not having sailed from the port of Cardiff.(*i*) And it was laid down that the popular, or commercial, sense must be given to the word "port," as distinguished from its definition for revenue or pilotage purposes.(*k*)

Unseaworthiness disentitles to advance freight.

§ 279. No freight is recoverable in advance unless the ship is seaworthy at the time of sailing, at any rate where the charter-party contains an express warranty of seaworthiness.(*l*) And the case would seem to be the same where the warranty is merely implied.(*m*)

(*e*) *Smith* v. *Pyman*, (1891) 1 Q. B. 742; *Oriental S.S. Co.* v. *Tylor*, 9 T. L. R. 405.

(*f*) *Price* v. *Livingstone*, 9 Q. B. D. 679. Per Lindley, L.J., at p. 682.

(*g*) 5 E. & B. 209; see also *Hudson* v. *Bilton*, 6 E. & B. 565.

(*h*) 15 Q. B. D. 580.

(*i*) See also *Roelandts* v. *Harrison*, 9 Ex. 444.

(*k*) Following *Price* v. *Livingstone*, 9 Q. B. D. 679; see also *Hunter* v. *Northern, &c., Ins. Co.*, 13 Ap. Ca. 717.

(*l*) *Thompson* v. *Gillespy*, 5 E. & B. 209.

(*m*) See *Kopitoff* v. *Wilson*, 1 Q. B. D. 377, 380; and cases cited *supra* § 90.

How much Freight is payable.(*n*)

Depends upon the agreement.

§ 280. The amount of freight which is payable in any case depends either upon the agreement of the parties, or upon the usage of the trade, or, in the absence of both these guides, upon what appears to a jury to be reasonable, regard being had to the current rate of freight at the time between the same ports.(*o*) Agreements as to freight are of course nearly as various as they are numerous, and therefore only a few general principles and leading decisions can be noticed.

Sum ascertained or ascertainable according to ship's capacity.

Where the charter-party stipulates for a gross sum for an entire ship, or part of a ship, for a whole voyage, this gross sum will be payable even though the merchant have not fully laden the ship.(*p*) And if a defined sum be agreed upon for every ton, or other portion of a ship's capacity, for the whole voyage, the payment must be for the number of tons, &c., which the ship is capable of containing, and not merely for the quantity actually put on board.(*p*)

On goods shipped.

If, on the other hand, an entire ship be hired, her burthen being expressed in the charter-party, and the merchant agree to pay a certain sum for every ton, &c., of goods that he shall put on board, but do not agree to furnish a complete lading, the shipowner or master cannot demand freight for more than the quantity of goods actually shipped.(*q*)

On goods carried.

If the shipper has agreed to pay a certain sum per ton, or per cask or bale of goods, payment must be made according to the number of tons, casks, or bales shipped, carried, and delivered.(*r*) In such a case the quantity is *primâ facie*, and as a general rule, to be ascertained by measurement at the port of discharge,(*s*) in the absence of any stipulation making the freight payable on "intake measurement."(*t*) But there is an exception to this general rule where the cargo has by heating or otherwise increased in bulk during the voyage. In such a case, freight being payable only on cargo shipped and carried throughout the voyage, the quantity must, in the absence of a custom to the contrary, be ascertained

How computed.

(*n*) As to the amount of freight which may be required from consignees or indorsees of bills of lading, whose stipulations differ from those of the charter-party, see *infra* §§ 305, 306.

(*o*) See *Millar* v. *Woodfall*, 8 E. & B. 493; *Mitcheson* v. *Nicol*, 7 Ex. 929; *Mitchell* v. *Darthez*, 2 B. N. C. 555, 571.

(*p*) *Benson* v. *Schneider*, 7 Taunt. 272; *Hunter* v. *Fry*, 2 B. & Ald. 421; *Barker* v. *Windle*, 6 El. & Bl. 675. As to effect of short delivery on lump-sum freight, see § 274 *supra*.

(*q*) Maclachlan, 4th ed. 476, citing *Lady James* v. *East India Co.*, Abbott, 13th ed. 553 (not reported).

(*r*) *Gibson* v. *Sturge*, 10 Ex. 622, at pp. 638, 639, 640.

(*s*) *The Skandinav*, 50 L. J. Ad. 46; per Pollock, C.B., *Gibson* v. *Sturge*, 10 Ex. at p. 641; *Nielsen* v. *Neame*, 1 C. & E. 288.

(*t*) As in *Spaight* v. *Farnworth*, 5 Q. B. D. 115 (*q.v.* as to how such measurement is to be ascertained, where some cargo has been lost, and some measurement marks obliterated); *Fullagsen* v. *Walford*, 1 C. & E. 198.

according to measurement at port of loading,(*u*) unless the parties by the use of such words as "paying freight on nett weight delivered,"(*x*) or in some other manner,(*y*) stipulate for a different arrangement. The right to have the measurement taken on this basis is not affected by the insertion of the words "quantity and quality unknown" in the margin of the bill of lading.(*z*)

Under time charter.

§ 281. If the shipper agrees to pay a defined sum per month, week, or other period of the voyage, the computation begins, in general, from the day on which the ship breaks ground on her voyage,(*a*) and continues during the course of it, inclusive of the whole of the day on which she is given up,(*b*) and of unavoidable delays not occasioned by the act or neglect of the shipowners or master, or by such circumstances as under the contract work a suspension of it for a particular period. Thus, where in such a case the ship is to be kept in repair by the owner during the voyage, freight is payable for the period necessarily consumed for that purpose, if it do not appear that the ship was insufficient at the outset, or that there was any improper delay in repairing her.(*c*)

And where a ship, chartered at a monthly freight for a voyage to any port or ports in S. Domingo and back to London, discharged part of her cargo at one port of that island, and was then ordered by the supercargo to proceed to another, which was under blockade, and was taken on the way there by one of the blockading cruisers and detained several weeks, and then took on board a homeward cargo and arrived in England, the shipowners recovered freight for the period of detention at the rate stipulated per month, as the ship was taken in proceeding to a port by order of the supercargo, and the freighters were answerable for the subsequent detention.(*d*)

If it is desired that time lost in repairs, or by reason of misfortune or accident, should not be counted, an appropriate stipulation should be inserted in the charter-party.(*e*)

No right to deduct damages for short delivery or injury to the goods.

§ 282. A consignee of goods, under a bill of lading, has no right to deduct from the freight payable on the delivery of the goods the value of goods which, though mentioned in the bill of lading, turn out not to have been put on board.(*f*) Nor can he deduct the value of goods which though shipped have been short

(*u*) *Gibson* v. *Sturge*, 10 Ex. 622; *Buckle* v. *Knoop*, L. R. 2 Ex. 125, 333.

(*x*) *Coulthurst* v. *Sweet*, L. R. 1 C. P. 649.

(*y*) *Tully* v. *Terry*, L. R. 8 C. P. 679; *infra* § 336.

(*z*) *Gibson* v. *Sturge*; *Tully* v. *Terry*, *ubi sup.*

(*a*) Per Eyre, C.J., *Curling* v. *Long*, 1 B. & P. at p. 636.

(*b*) *Angier* v. *Stewart*, 1 C. & E. 357.

(*c*) *Ripley* v. *Scaife*, 5 B. & C. 167; *Havelock* v. *Geddes*, 10 East, 555; Maclachlan, 4th ed. 476.

(*d*) *Moorsom* v. *Greaves*, 2 Camp. 627; cp. *Beale* v. *Thompson*, 3 B. & P. at p. 430.

(*e*) As in *Hogarth* v. *Miller*, (1891) A. C. 48. Freight lost to the shipowner under such a clause by reason of a peril insured against is recoverable against his underwriters on freight. *The Alps*, (1893) P. 109.

(*f*) *Mayer* v. *Dresser*, 16 C. B. N. S. 646.

delivered, nor the amount of damages sustained in transit by the negligence of the shipowner or his servants. Such claims can only be the subject of cross-action or counter-claim.(*g*)

Pro ratâ Freight, what it is, and when it is payable.

What *pro ratâ* freight is payable.

§ 283. If the ship is by inevitable necessity forced into a port short of her destination, and unable to prosecute her voyage, and the merchant voluntarily accepts the goods at that port, he must pay freight *pro ratâ itineris*, more usually called *pro ratâ* freight—that is, an amount proportioned to the part of the voyage actually performed;(*h*) for in such case the law implies a new contract by the owner of the goods to pay compensation commensurable with the benefit actually received.(*i*)

To sustain a claim for *pro ratâ* freight, there must be such a voluntary acceptance of the goods at the intermediate port as to raise a fair inference that their further carriage was dispensed with, the master being on his part ready, if required, to complete it. The arrangements must be mutual and voluntary on both sides, not amounting on the one hand to a refusal to permit the farther carriage of the goods, which would entitle the master to require full freight before delivering them; nor on the other to a refusal or inability to carry them, which would entitle the merchant to receive the goods without paying freight at all.(*k*)

Examples. *Pro ratâ* freight.

Where, on a voyage to Lisbon, the ship was captured within four days' sail of that port, and shortly afterwards recaptured and brought into a port in Devonshire, where the shipowners abandoned her to the insurers, and the owners of the cargo sent it to Bilbao, where it was sold, it was held, that the goods having been accepted in England, a rateable proportion of the freight was payable.(*l*)

So where a ship freighted to Hamburgh was prevented by restraints of princes from arriving there, and the consignees directed the master to deliver the cargo at Gluckstadt, and accepted a portion of it there, they were held liable to pay freight *pro ratâ* for the goods so accepted.(*m*) And where goods were to have been delivered at Glasgow, and the ship was lost within a short distance of that port, and the owner of part of the goods abandoned them to the insurers, who took possession of them and

Full freight.

(*g*) *Stimson* v. *Hall*, 1 H. & N. 831; *Davidson* v. *Gwynne*, 12 East, 381; per Dr. Lushington, *The Norway*, B. & L. at p. 241; and see § 274 *supra*.

(*h*) *The Teutonia*, L. R. 3 Adm. 394, 416; L. R. 4 P. C. 172; *Luke* v. *Lyde*, 2 Burr. 882; *The Soblomsten*, L. R. 1 Adm. 293.

(*i*) Per Parke, B., *Vlierboom* v. *Chapman*, 13 M. & W. at p. 238.

(*k*) *Metcalfe* v. *Britannia Ironworks Co.*, 1 Q. B. D. 613; 2 *ib.* 423; *The Soblomsten*, L. R. 1 Adm. 293; *Hunter* v. *Prinsep*, 10 East, 378, 394; *Hopper* v. *Burness*, 1 C. P. D. 137, 140: *Hill* v. *Wilson*, 4 C. P. D. 329, 335; *Acatos* v. *Burns*, 3 Ex. D. 282; and see *supra* §§ 269–272.

(*l*) *Luke* v. *Lyde*, 2 Burr. 882, 888.

(*m*) *Christy* v. *Row*, 1 Taunt. 300.

conveyed them to Bristol, although the master provided another ship and offered to carry them to Glasgow, it was held, that the shipowners were entitled to the whole freight.(*n*)

No freight payable.

The third alternative occurred in *Osgood* v. *Groning*,(*o*) where the master, before the completion of the voyage, brought the ship back to an intermediate port, because there was a danger of her being confiscated at the port of discharge, and landed the cargo. Legal proceedings were afterwards taken by the cargo-owners to prevent him from selling it, and it was by consent delivered into their hands without prejudice to the rights of the parties; it was held, that no claim to *pro ratâ* freight existed.

On the same principle, in *Metcalfe* v. *Britannia Ironworks Company*,(*p*) a ship under charter to deliver her cargo at Taganrog in the Sea of Azof, was blocked by ice, while distant 300 miles by sea, and 700 by land, from that port. The master discharged the cargo, notwithstanding the opposition of the charterer's agent, and placed it with the Custom House authorities at Kertch, who delivered it to the consignees' agent without requiring payment of freight. In an action against the charterers, it was held that neither full nor *pro ratâ* freight was recoverable.

Effect of abandonment and subsequent salvage.

§ 284. We have seen that no freight is payable where the ship has been properly abandoned, or subsequently salved.(*q*) Where, however, the master and crew have been wrongfully dispossessed by salvors,(*r*) or where, as it seems, the abandonment has been wrongful and the contract of affreightment is not put an end to,(*s*) the cargo-owners will not be entitled to delivery of their goods, if brought into their port of destination, without payment of full freight, or if brought into an intermediate port, the master being ready and willing to complete the carriage, without payment of *pro ratâ* freight.

Mitchell v. *Darthez.*

In *Mitchell* v. *Darthez*,(*t*) the ship was chartered from London to Buenos Ayres and to return with a cargo to a port between Gibraltar and Antwerp, freight to be paid in a gross sum on the delivery of the homeward cargo. She proceeded to Buenos Ayres, and having there loaded goods, sailed for Gibraltar, but on her way she was obliged by sea perils to put into Fayal, where part of her cargo was necessarily sold. The master returned to England, leaving the remainder at Fayal, and giving instructions to the Vice-Consul there to forward it to Gibraltar, but giving no authority on the shipowners' behalf to contract for the hire of a

(*n*) *Lutwidge* v. *Grey*, cited in *Luke* v. *Lyde*, 2 Burr. 885.

(*o*) 2 Camp. 466; see also *Liddard* v. *Lopes*, 10 East, 526; *Hunter* v. *Prinsep*, *ib.* 378; *The Patria*, L. R. 3 Ad. 436.

(*p*) 1 Q. B. D. 613; 2 *ib.* 413.

(*q*) *Supra* § 272.

(*r*) *The Leptir*, 52 L. T. 768.

(*s*) Per Butt, J., *The Leptir*, 52 L. T. at p. 769; per Brett, L.J., *The Cito*, 7 P. D. at p. 8.

(*t*) 2 B. N. C. 555.

When *pro ratâ* freight is payable.

ship. The Vice-Consul chartered a ship, *on behalf of the owners of the cargo*, which carried the remainder of the cargo to Gibraltar and delivered it there on payment of the freight due on the last mentioned charter-party. It was held, that the carriage to Gibraltar was not done by the shipowners, and that freight under their charter-party was not payable; that no freight *pro ratâ* could be claimed by the shipowners for the carriage from Fayal to Gibraltar; but that a *pro ratâ* freight was due to them for the carriage from Buenos Ayres to Fayal, as the shippers had derived benefit from it, and as they had ratified the acts of the Vice-Consul as their agent, and as they must be taken to have accepted the goods at Fayal by their agent the Vice-Consul, in order to forward them on to Gibraltar.

Not where cargo sold.

§ 285. We have seen (*u*) that where the master necessarily sells the cargo, no freight can be claimed. And this is so, even where the cargo-owner has assented to its being sold, if this was done because the goods were so damaged as not to be worth forwarding, so that he had in fact no option of having them sent on to their destination.(*x*) A similar result was arrived at in *Hunter* v. *Prinsep*,(*y*) where goods having been shipped for delivery in London, the ship was wrecked at St. Kitt's, and the goods were there sold by the Vice-Admiralty Court on the application of the master, acting *bonâ fide*, but without instructions, and it was held that no freight could be recovered.

It should be mentioned, however, that in one case, a ship and cargo were condemned and sold by a French Court of competent jurisdiction, and this sentence was afterwards reversed, and the proceeds of the sale paid, as it would seem, to the owners of the goods; and it was held, that freight *pro ratâ* was due, as the shipowners had been prevented from carrying the goods to the port of delivery by no fault of their own, but only by a foreign Court ordering a sale pending the suit.(*z*)

The Right to Freight as affected by Capture.

Freight as affected by capture.

§ 286. In time of war the Court of Admiralty was, before the Judicature Acts, often called upon, in the case of vessels that had been captured, to determine the rights of parties with respect to freight. In so doing, that Court usually acted on the same principles as the Courts of Common Law, holding that the goods must be carried to their destination before any claim to freight could arise.(*a*)

(*u*) *Supra* § 272; *Vlierboom* v. *Chapman*, 13 M. & W. 230; *Hopper* v. *Burness*, 1 C. P. D. 137; *Acatos* v. *Burns*, 3 Ex. D. 282.

(*x*) *Hill* v. *Wilson*, 4 C. P. D. 329, 335.

(*y*) 10 East, 378.

(*z*) *Baillie* v. *Mondigliani*, Park on Ins. 116. This authority "ought to be understood with particular reference to the facts then before the court," per Lord Ellenborough, C.J., 10 East, 392.

(*a*) *The Diana*, 5 C. Rob. 67, 71; *The Etrusco*, *ib.* 74; *The Vrow Anna Catharina*, 6 *ib.* 269; *The Louisa*, 1 Dods. 317.

In some cases, however, it exercised an equitable jurisdiction over such questions, regarding the master as "a favourite with the Court."(b) Thus where a ship had been chartered to deliver a cargo at Lisbon, and at the entrance of the Tagus was warned off by the British blockading squadron and driven to sea by a gale, and there captured by a Spanish privateer, and retaken by a British cruiser and carried to Madeira and sold with her cargo by the salvors—the ship and cargo being afterwards restored on appeal; the Court, considering that the loss was unavoidable and the calamity common to both ship and cargo, directed a moiety of the freight to be paid, thereby equitably dividing the loss.(c)

Court exercises equitable jurisdiction.

Again, in *The Racehorse*, a British ship was freighted from Liverpool to St. Martin's and Lisbon, to bring a cargo of fruit to Ireland, and was taken, on her return voyage, by a French privateer, off Falmouth, and afterwards recaptured and brought to Falmouth. The ship was restored on the 2nd of July. No claim was made for the cargo till the 17th of July. Restitution of the cargo did not pass till the 16th of November. It appeared that the ship did not wait for the cargo. It was held by Sir W. Scott, that the dissolution of the contract being due not to the owner of the ship, but to the owner of the cargo who was not ready to proceed, the ship was entitled to her whole freight.(d)

§ 287. The Court of Admiralty has held, that where the capture is caused by the incapacity of the goods alone, the goods owner cannot allege that the contract is not performed. But, that if the non-completion is caused by the incapacity of the ship, the shipowner cannot demand the freight, for which he stipulated only on the performance of his contract.(e)

Capture due to fault of cargo: freight recoverable.

Thus, an American ship, with a British licence, entered the port of Amsterdam whilst it was blockaded by a British squadron, and the master having discharged his cargo loaded another, which was improperly documented, and sailed with it so documented. The ship was taken and carried into an English port, and afterwards restored without her cargo. It was held, that the master was entitled to his full freight and expenses, as the cargo was the sole occasion of the ship being stopped.(f)

But, where a cargo belonging to English merchants was shipped on a Swedish ship to be conveyed to Venice, and after sailing,

Fault of ship, freight not recoverable.

(b) See per Sir W. Scott, *The Martha*, 3 C. Rob. at p. 107. There seems no reason why in case of war, and the jurisdiction of a Prize Court being conferred on the Admiralty Division, that Court should not exercise the same discretion.

(c) *The Friends*, Edw. 246.

(d) *The Racehorse*, 3 C. Rob. 101; see also *The Hamilton*, cited in *The Martha*, *ib.* 107 n.

(e) See per Sir W. Scott, *The Fortuna*, Edw. 57; Maude and Pollock, 4th ed. 374.

(f) *The Juno*, 2 C. Rob. 124; *The Prosper*, Edw. 72.

the ship was obliged by bad weather to put into Falmouth, where she was detained under an embargo against Swedish ships, but her cargo was restored to its owners, it was held, that they were not liable to pay freight, it being the fault of the ship that the voyage had not been performed, but that they were bound to pay the expenses incurred by the ship on account of the cargo.(*g*)

Captors, when entitled to freight.

§ 288. The Court of Admiralty held, that captors, who performed the contract by carrying the goods to their destination, were usually entitled to freight;(*h*) and in some cases that they were entitled to freight, although the voyage had not been performed. Thus where the goods were not carried to the actual port of destination in Holland, but were brought to England, whither the owners had intended them to come finally, and whither they would have been consigned at first but for regulations of the Dutch Government, which prevented their being brought here direct, the Court held, that they had been brought to their real, although not to their nominal destination, and that freight was therefore due.(*i*)

And in the case of American ships bound to France or Holland and brought into English ports in consequence of the prohibitory law in force during the war, where the owners of the cargoes elected to sell here, the Court held that the full freight was due.(*k*)

Captor of goods in neutral ship required to pay freight.

§ 289. If a neutral ship, having enemy's goods, was taken, the captor paid the whole freight, because he represented the enemy by possessing himself of the enemy's goods *jure belli*, and although the whole freight had not been earned by the completion of the voyage; yet, as the captor by his act of seizure had prevented its completion, his seizure operated to the same effect as an actual delivery of the goods to the consignee, and subjected him to the payment of full freight.(*l*)

Unless ship guilty of breach of neutrality.

But, if the neutral ship was guilty of a departure from neutral conduct, as by carrying on for the enemy his coasting or colonial trade when it was not open to all the world;(*m*) by acting in his revenue service; by trading between the ports of allied enemies with false papers; or by destruction of papers, at least if accompanied by prevarication, falsehood, or other acts of *mala fides*,(*n*)

(*g*) *The Isabella Jacobina*, 4 C. Rob. 77. See also *The Worldsborgaren*, *ib.* 17.

(*h*) *The Fortuna*, 4 C. Rob. 278; *The Diana*, 5 *ib.* 67; *The Vrow Anna Catharina*, 6 *ib.* 269; *The Prosper*, Edw. 72.

(*i*) *The Diana*, 5 C. Rob. 67.

(*k*) *The Friends*, Edw. 246.

(*l*) Per Sir W. Scott, *The Copenhagen*, 1 C. Rob. 289, 291; *The Bremen Flugge*, 4 C. Rob. 91; *The Prosper*, Edw. 72, 76.

(*m*) *The Emanuel*, 1 C. Rob. 296; *The Rebecca*, 2 *ib.* 101; *The Wilhelmina*, *ib.* (note); *The Atlas*, 3 *ib.* 304, and note; Maclachlan, 4th ed. 520.

(*n*) *The Rising Sun*, 2 C. Rob. 104, 108; *The Anna Christiana*, Hay & Marr., 161; Maclachlan, *ubi sup.*

no freight was awarded. Nor was it allowed if the goods were contraband by the law of nations, and the master was not allowed to set up as a defence, or an excuse, his ignorance of the contents of his cargo, since he is legally bound in time of war to know the contents. If a different rule could be sustained, it might be applied to excuse the carrying of all contraband.(*o*) In the case of a neutral ship trading between the ports of allied enemies, the claim for freight was, in the absence of aggravating circumstances, not altogether refused, but postponed to the captor's claim for his expenses.(*p*)

The Master's Lien on the Cargo, at Common Law, for Freight, Passage-money, and Average Contributions.

Master's "lien" for freight.

§ 290. If the goods are safely carried and freight earned,(*q*) the shipowners and their agent, the master, have "a lien" on the goods for the amount of the freight. In other words, they have a right to retain possession of the goods, and cannot be compelled to part with them until the freight is paid.(*r*) And this is equally so where the freight is made payable "on the delivery of the cargo," so that the payment of freight and delivery of the cargo are concurrent acts.(*s*)

The law gives this lien without any provision for it being made either in the bill of lading or otherwise.(*r*) But in the case of a chartered ship the lien for the chartered freight may, as will be seen, be affected by bills of lading signed by the master.(*t*)

Where goods shipped on owner's account, and bills of lading assigned.

Even where goods have been placed by the shipowner on his own account in his own ship, under bills of lading naming a certain rate of freight, although, so long as he retains the bills of lading and the goods are deliverable to him, no freight will be payable, it becomes so if he makes third persons the consignees or indorsees of the bills of lading, so that the goods become deliverable to their order. And against such persons and their assigns the master is entitled and bound in the interest of his owners, or of others to whom they may have assigned their right to the freight, to require payment of it before parting with the goods.(*u*) It would be otherwise, however, if the goods were by

(*o*) *The Mercurius*, 1 C. Rob. 288; *The Ostor Risoer*, 4 C. Rob. 199.

(*p*) *The Vrow Henrica*, 4 C. Rob. 343, 347.

(*q*) As to when freight is earned, see §§ 268–275 *supra*.

(*r*) *Kirchner* v. *Venus*, 12 Moo. P. C. C. 361; *How* v. *Kirchner*, 11 Moo. P. C. 21; *The Cargo ex Galam*, B. & L. 167.

(*s*) *The Energie*, L. R. 6 P. C. 306, 314; *Tate* v. *Meek*, 8 Taunt. 280; *Yates* v. *Railston*, *ib.* 293.

(*t*) *Infra* §§ 302–310.

(*u*) *Weguelin* v. *Cellier*, L. R. 6 H. L. 286; but where the named rate of freight is merely nominal, no higher rate can be required, although the shipowners may have agreed with the purchasers of the cargo that the freight shall for certain purposes be taken to be at a higher rate; *Keith* v. *Burrows*, 2 C. P. D. 163; 2 Ap. Ca. 636; revg. 1 C. P. D. 722.

the bill of lading expressed to be carried "freight free" on owner's account.(x)

Consignor's liability continues if lien not enforced.

But the master is not bound to exercise his lien for the benefit of the consignor, and his failure to do so does not put an end to the consignor's liability for freight.(y)

Cases in which there is no lien: Goods not carried.

§ 291. Where no freight is due, as where the master is unable or unwilling to carry the goods to their destination,(z) there is of course no lien. And where the carriage of the goods is prevented by the default of the shipper, so that the shipowner becomes entitled to compensation for the loss of freight and advance freight, a clause in the charter-party giving a lien for freight gives no lien for such compensation.(a)

Advance freight.

Nor is there, even after carriage of the goods, any lien for freight payable in advance, where it has not been paid according to the contract,(b) or where the charterer, having given his acceptance for it, has become insolvent before delivery of the cargo, and without having taken up the acceptance;(c) unless, of course, the parties have by their contract expressly created a lien.(d) The same rule was applied when freight was, by the bill of lading, payable at the port of destination, ship lost or not lost.(e)

Freight payable after delivery of cargo.

And if a shipowner stipulates that the freight shall not be paid until *after* the delivery of the cargo, neither he nor his master can claim a lien on the cargo for the freight, in the face of his agreement;(f) and the same rule was applied where the freight was made payable "two months after the vessel's inward report."(g)

Limits of the master's right of lien for freight. What goods he may detain.

§ 292. The master may detain any part of the merchandise, consigned under one contract to one person and carried on the same voyage, for the freight of all so carried. But if goods, even of the same owner, are sent in the same ship, under different contracts to carry, with different termini, no lien attaches for freight under one contract upon goods shipped under the other.(h)

Can lien be transferred on transhipment.

Whether a shipowner, and his agent the master, if obliged to tranship the goods, can at the same time transfer the lien, which they would have had for freight, if they had conveyed them to

(x) See *Mercantile Bank* v. *Gladstone*, L. R. 3 Ex. 233.

(y) *Shepard* v. *De Bernales*, 13 East, 565; *Domett* v. *Beckford*, 5 B. & Ad. 521; § 268 *supra*.

(z) *Supra* §§ 269–273.

(a) *Ex p. Nyholm, re Child*, 43 L. J. Bk. 21; *Birley* v. *Gladstone*, 3 M. & S. 205.

(b) *Kirchner* v. *Venus*, 12 Moo. P. C. 361; *How* v. *Kirchner*, 11 Moo. P. C. 21; *Gardner* v. *Trechmann*, 15 Q. B. D. 154; not following *Neish* v. *Graham*, 8 E. & B. 505, and the *dicta* in *Gilkison* v. *Middleton*, 2 C. B. N. S. at p. 153.

(c) *Tamvaco* v. *Simpson*, L. R. 1 C. P. 363.

(d) See *Gilkison* v. *Middleton*, 2 C. B. N. S. 134.

(e) *Nelson* v. *The Association, &c.*, 43 L. J. C. P. 218; cp. *Thompson* v. *Small*, 1 C. B. 328.

(f) *Foster* v. *Colby*, 3 H. & N. 705; *How* v. *Kirchner, ubi sup.*; *Lucas* v *Nockells*, 4 Bing. 729, 741.

(g) *Alsager* v. *St. Katherine's Dock Co.*, 14 M. & W. 794.

(h) Angell on Carriers, 373; *Bernal* v. *Pim*, 1 Gale, 17; *Sodergren* v. *Flight*, cited in *Hanson* v. *Meyer*, 6 East, 622; Abbott, 13th ed. 446.

their destination, is not decided. Good sense would seem to suggest that this should be so. But at all events, the shipowner or master who so tranships can transfer no greater right of lien than that which he himself possesses.(*i*)

Master cannot, if superseded in collection of freight, enforce lien.

The owner of a ship has a right to commit to any person abroad the office of collecting the freight. If the shipowners send an order to a house abroad to collect the freight, that takes the freight out of the hands and control of the master. And in such case he could not detain the cargo for freight.(*k*)

Other liens.

§ 293. There are certain other matters in respect of which the master may enforce a lien, though it is not provided for in the contract of affreightment. Thus he has a lien for the recovery of passage-money upon the luggage of a passenger, and upon any other property such passenger may have on board. But he has no lien on the passenger himself, nor on the clothes which he is actually wearing when about to leave the ship.(*l*)

For passage-money.

For expenses for benefit of cargo, and general average.

§ 294. And where a master, in order to preserve cargo from a danger which has not arisen from any default of the shipowner or his servants, properly incurs extraordinary expense, or makes a sacrifice in taking such measures as a prudent man would think most conducive to the benefit of the cargo-owners concerned, he has a lien on all the goods for whose preservation the expense is incurred or sacrifice made. And this is equally the case whether the expense or sacrifice is for the preservation of particular goods,(*m*) or for the safety of the whole adventure so as to be the subject of a general average contribution.(*n*)

When the right to general average contribution arises.

§ 295. To give rise to a lien for general average, the expense or sacrifice must have been incurred or made voluntarily for the general preservation of the whole adventure, or at least for the preservation of more subjects than one, from some real or immediately impending danger.(*o*)

No right to contribution, and therefore no lien, arises if that which has been cut away or thrown overboard was "virtually a wreck and valueless at the time it went over." In such a case there is in fact no sacrifice.(*p*) And if the jettison be improper,(*q*) or necessitated by the fault of the shipowner or his servants,(*r*)

(*i*) *Matthews* v. *Gibbs*, 3 E. & E. 282.

(*k*) *The Edmond*, Lush. 57, 63.

(*l*) *Wolf* v. *Summers*, 2 Camp. 631.

(*m*) *Hingston* v. *Wendt*, 1 Q. B. D. 367.

(*n*) *Cargo ex Galam*, B. & L. 167; per Lord Tenterden, *Scaife* v. *Tobin*, 3 B. & Ad. 523; *Crooks* v. *Allan*, 5 Q. B. D. 38; per Lord Esher, M.R., *Huth* v. *Lamport*, 16 Q. B. D. 736; see, however, per Mathew, J., S. C., *ib.* 444. See §§ 243–245 *supra*.

(*o*) Arnould, § 328; per Blackburn, J., *Kemp* v. *Halliday*, 6 B. & S. at p. 746; *The Brigella*, 9 T. L. R. 399, § 244, note (*x*) *supra*. The maritime adventure is not at an end until all the goods are delivered. *Whitecross Wire Co.* v. *Savill*, 8 Q. B. D. 653.

(*p*) *Shepherd* v. *Kottgen*, 2 C. P. D. 578, 585.

(*q*) Carver, § 15; per Willes, J., *Notara* v. *Henderson*, L. R. 7 Q. B. at p. 236.

(*r*) *Schloss* v. *Heriot*, 14 C. B. N. S. 59; *Strang* v. *Scott*, 14 Ap. Ca. 601, 608; *Burton* v. *English*, 12 Q. B. D. 218.

he will not be entitled to contribution from the cargo-owners' and further, as we have seen, will be liable for all loss occasioned to them thereby, unless protected by the terms of his contract.(*s*) The fact that the jettison was necessitated by the negligence of the shipowner's servants does not, however, deprive the cargo-owners of their right to contribution.(*t*)

Examples of general average losses.

The following examples sufficiently illustrate the kind of sacrifice which gives rise to a general average claim:—jettisoning cargo, or cutting away masts, rigging, or furniture of the ship;(*u*) pouring water upon the cargo for the purpose of extinguishing a fire;(*x*) scuttling the ship for the like purpose;(*y*) burning spars, cargo, or ship's stores as fuel for the donkey engine used in pumping the ship, when her coal had run short, and she was in danger of sinking, the voyage having been commenced with a reasonable supply for pumping purposes.(*z*)

What are general average expenses.

§ 296. More difficult questions arise in determining what expenses give rise to a general average claim. The general principle is that "the loss immediate and consequential caused by a sacrifice for the benefit of cargo, ship and freight, should be borne by all."(*a*) Two recent cases will sufficiently illustrate this principle, and the difficulties attending its application. In *Atwood* v. *Sellar*,(*b*) the ship was compelled, in consequence of a general average sacrifice—viz., the cutting away of her fore-topmast—to put into a port of refuge and there repair the injury. It was held that the expenses, not only of repairing the injury, and necessarily unloading the cargo for that purpose, but also of warehousing and reloading the cargo, and of pilotage and other charges in leaving port, were the subject of general average; and it was doubted by the Court whether expenses for wages and provisions while in the port of refuge might not also constitute a claim for general average.(*c*)

In *Svendsen* v. *Wallace*,(*d*) on the other hand, the ship was compelled by reason of a dangerous leak, for the safety of the

(*s*) It has been held that where the shipowner is excused by his contract from liability for the negligence of his servants, he may recover an average contribution in respect of a sacrifice of his property necessitated by such negligence. *The Carron Park*, 15 P. D. 203. The correctness of this decision has, however, been doubted. See Carver, § 373 c.

(*t*) *Strang* v. *Scott*, 14 Ap. Ca. 601.

(*u*) Phillips, 1279; see §§ 243–245 *supra*. As to when deck cargo is the subject of general average, see § 251 *supra*.

(*x*) *Whitecross Wire Co.* v. *Savill*, 8 Q. B. D. 652.

(*y*) *Achard* v. *Ring*, 31 L. T. 647. In *Stewart* v. *West India, &c., S. S. Co.*, L. R. 8 Q. B. 88, 362, a contrary custom of British average staters was allowed, under the terms of the bill of lading, to prevail. The custom appears to have been since abandoned. See note to report of the case in 2 Asp. p. 32.

(*z*) *Robinson* v. *Price*, 2 Q. B. D. 91, 295; *Harrison* v. *Bank of Australasia*, L. R. 7 Ex. 39. But the cost of coal purchased on the voyage under the like circumstances is not chargeable to general average. S. CC., see 2 Q. B. D. at p. 95.

(*a*) Per the C. A., *Atwood* v. *Sellar*, 5 Q. B. D. at p. 289.

(*b*) 5 Q. B. D. 286.

(*c*) 5 Q. B. D. at p. 291.

(*d*) 13 Q. B. D. 69; 10 Ap. Ca. 404.

whole adventure, to put into a port of refuge and there land the cargo. It was held that though the expense of doing these things, which were for the general safety, was the subject of general average, yet the expense of re-shipping the cargo, and of pilotage and port dues outwards, being necessary, not for the safety of the cargo, but in order to enable the shipowner to fulfil his contract, must be placed on the same footing as the cost of the repairs, which admittedly were consequent upon a particular average loss, and properly chargeable to ship alone.

The principle underlying the decision in the last-mentioned case is that the shipowner is not entitled to charge to general average expenses incurred for the purpose of earning his freight. A more simple example is supplied when, after the goods are in safety, expense is incurred in floating a stranded ship. Such expenses are not, at least in the absence of special circumstances, the subject of general average.(*e*)

Amount payable under salvage agreement.

Where by reason of a breakdown of machinery the master properly, for the preservation of the whole adventure, enters into a salvage agreement with the master of another ship, the salvage remuneration may be the subject of general average. The amount agreed upon is not, however, necessarily the amount in respect of which the contribution is to be made; and in case of dispute it is for the jury to determine whether the whole amount agreed upon, or what proportion of it, is properly chargeable to general average.(*f*)

Average bond.

§ 297. But although the master has a right to insist on detaining the cargo until the amount due for general average has been paid, this amount cannot be accurately known until after adjustment, which may involve considerable delay. In enforcing his lien therefore the master incurs two risks: that of asking too much, which would render him liable to an action for wrongful detention;(*g*) and that of asking too little, which will leave the shipowners to some extent unsecured, and may involve them in a liability to consignees who have to receive a contribution.(*h*)

Average bond.

In the case, therefore, of a general ship, where the consignees are numerous, the more usual course is for the master, before he delivers the goods, to take an average bond or agreement from the different merchants or their agents (*i*) for payment of their

(*e*) *Walthew* v. *Mavrojani*, L. R. 8 Ex. 116; *Job* v. *Langton*, 6 E. & B. 779; *R. M. S. Packet Co.* v. *English Bank of Rio Janeiro*, 19 Q. B. D. 362; see also *Schuster* v. *Fletcher*, 3 Q. B. D. 418; *Hallett* v. *Wigram*, 9 C. B. 580.

(*f*) *Anderson* v. *Ocean S.S. Co.*, 10 App. Ca. 107.

(*g*) *The Norway*, B. & L. 377; *The Energie*, L. R. 6 P. C. 306.

(*h*) See *Huth* v. *Lamport*, 16 Q.B.D. 445, per Mathew, J.; *ib.* 736, per Lord Esher, M.R.; *Crooks* v. *Allan*, 5 Q. B. D. 38.

(*i*) An agent entrusted with bills of lading for the purpose of obtaining possession of the cargo is impliedly authorised to bind the cargo-owner by an agreement to pay, on condition of its being delivered, charges for which there is a lien upon it; *Hingston* v. *Wendt*, 1 Q. B. D. 367.

proportion of the average when the same shall be adjusted.(*k*) But as he is not entitled to exercise his lien for an excessive amount, so he is not entitled to insist on a bond which is unreasonable.(*l*)

Subject to this it is, in such a case, not only his right but his duty to obtain proper security, and to take the necessary steps to obtain an "adjustment" of the different rights and liabilities. If he fail to do so, and by reason of such failure those consignees who are entitled to receive are unable to obtain payment of their contribution, the shipowners, and, as it would seem, the master will be liable to an action for the omission.(*m*)

Liens by Express Contract for Dead Freight, Demurrage, &c.

Liens created by express contract.

§ .298 In the absence of express agreement or usage, the shipowner and master have no lien on the goods for demurrage;(*n*) or for wharfage;(*o*) or for pilotage or port charges;(*p*) or for damages for short loading, whether liquidated or unliquidated, and sometimes described in the charter-party under the term "dead freight";(*q*) or for damages for breach of covenants contained in the charter-party.(*r*) And no special lien can be obtained by usage, unless both parties to the agreement were cognisant of the usage when the agreement was entered into.(*s*)

Lien clause.

But by agreement the shipowner's and master's lien may be either extended or wholly excluded and abandoned. Thus a lien is frequently reserved by a clause in the contract, not only for freight and average, but also for "dead freight" and demurrage.(*t*)

"Dead freight" · what it is.

§ 299. The meaning of the term "dead freight" has been the subject of much discussion, and the opinions that have been expressed upon it are not easy to reconcile. It is, however, clear from the case of *McLean* v. *Fleming* (*u*) that where the amount to be paid for short loading is so fixed by the charter-party as to be ascertainable by calculation, a lien for it may be created under the description of a lien for "dead freight." And the House of Lords in that case, adopting the language of Lord Ellenborough

(*k*) Abbott, 13th ed. 446; *Crooks* v. *Allan*, *ubi sup.*

(*l*) *Huth* v. *Lamport*, 16 Q. B. D. 443; 735.

(*m*) *Crooks* v. *Allan*, *ubi sup.*; but the master is not bound to exercise a lien on the cargo for the benefit of salvors of ship and cargo; *The Raisby*, 10 P. D. 114.

(*n*) Abbott, 13th ed. 245; *Phillips* v. *Rodie*, 15 East, 547.

(*o*) *Bishop* v. *Ware*, 3 Camp. 360.

(*p*) *Faith* v. *East India Co.*, 4 B. & Ald. 630; Abbott, 13th ed. 245.

(*q*) *Phillips* v. *Rodie*, 15 East, 547; *Gray* v. *Carr*, L. R. 6 Q. B. 522.

(*r*) *Birley* v. *Gladstone*, 3 M. & S. 205; Angell on Carriers, 383; Abbott, 13th ed. 245.

(*s*) Per Lord Ellenborough, C.J., 15 East, at p. 554.

(*t*) In *Hick* v. *Rodocanachi* (1892), 2 Q. B. 626 (affd. (1893) A. C. 22, sub. tit. *Hick* v. *Raymond*), the lien reserved by the charter-party was "for freight, dead freight, demurrage, and lighterage at the port of discharge, and average."

(*u*) L. R. 2 H. L. Sc. 128; note to *Gray* v. *Carr*, L. R. 6 Q. B. 558.

in *Phillips* v. *Rodie*,(*x*) laid it down that unliquidated damages for not loading a full cargo may properly be described as "dead freight." In *Gray* v. *Carr*,(*y*) however, a majority of the Exchequer Chamber declined to adopt this opinion, pointing out that it was not necessary to the decision of the case before the House of Lords, the damages being there ascertainable by calculation. A careful perusal, however, of the reasons given by the learned lords who decided *McLean* v. *Fleming* seems to show that their decision is not susceptible of this explanation.(*z*)

Lien for demurrage.

§ 300. Where a lien is given for demurrage, the meaning attached to the word demurrage in the lien clause is the meaning which it has in other parts of the contract of affreightment.(*a*) The extent of the lien clause for demurrage has been the subject of much litigation and of numerous judicial decisions. The following rules with regard to it may now be stated with tolerable confidence:—

Rules for construction of the lien for demurrage.

(1) Where the contract of affreightment provides for demurrage, in either sense of the word, at the port of loading, and demurrage in that sense is incurred there, if a lien for demurrage is given by the contract in general terms, it extends to demurrage at the port of loading as well as at the port of discharge.(*b*)

Construction of lien for demurrage.

(2) Where the contract of affreightment provides for demurrage, in either sense, at the port of discharge, but makes no provision for demurrage at the port of loading, a lien in general terms for demurrage does not extend to unliquidated damages for detention at the port of loading.(*c*)

(3) Where under the contract the period allowed for discharging is fixed either absolutely or by reference to the tonnage of the ship, no provision being made as to the time to be occupied in loading, a clause fixing in general terms the demurrage, in the sense of the rate of compensation for undue detention, to be paid, does not relate to the loading. In such a case, therefore, a demurrage lien cannot be exercised to enforce payment for detention beyond a reasonable time at the loading port.(*d*)

(*x*) 15 East, 547.

(*y*) *Gray* v. *Carr*, L. R. 6 Q. B. 522, 541, per Brett, J., following *Pearson* v. *Goschen*, 17 C. B. N. S. 352. Bramwell, B., seems to favour the view that, "dead freight" should in strictness be applied only to a liquidated sum, but that like "demurrage," it may also be used in a more popular sense, to cover unliquidated damages for short loading, L. R. 6 Q. B. pp. 549, 551.

(*z*) See especially per Lord Westbury, L. R. 2 H. L. Sc. at p. 134, and Lord Colonsay, at p. 138.

(*a*) *Clink* v. *Radford*, (1891) 1 Q.B. 625. See per Ld. Esher, M.R., at p. 629; per Bowen, L.J., at p. 631. *Sanguinetti* v. *Pacific, &c., Co.* 2 Q. B. D. at p. 247, per Mellish, L.J. For the different meanings of the word demurrage see § 152 *supra*.

(*b*) *Francesco* v. *Massey*, L. R. 8 Ex. 101; *Gray* v. *Carr*, L. R. 6 Q. B. 522; *Kish* v. *Cory*, L. R. 10 Q. B. 553; *Restitution S.S. Co.* v. *Pirie*, 64 L. T. 491 (n); *Bannister* v. *Breslauer*, L. R. 2 C. P. 497.

(*c*) *Lockhart* v. *Falk*, L. R. 10 Ex. 132; *Lister* v. *Van Haansberger*, 1 Q. B. D. 269, 273, per Blackburn, J.; *Clink* v. *Radford*, (1891) 1 Q. B. 625; *Gardiner* v. *McFarlane*, 16 Sess. Ca. (4th ser.) 664; *Dunlop* v. *Balfour*, (1892) 1 Q. B. 507.

(*d*) *Dunlop* v. *Balfour*, (1892) 1 Q. B. 507; *Lockhart* v. *Falk*, L. R. 10 Ex. 132; *Clink* v. *Radford*, 1891, 1 Q. B. 625.

Construction of lien for demurrage.

The following propositions must be stated with less confidence than the foregoing:—

(4) Where demurrage, in the sense of compensation for an allowed detention, is provided for, and a lien for demurrage created, by the contract, and the vessel is detained beyond the demurrage days, the lien extends only to demurrage proper, and not to damages for detention beyond the demurrage days.(*e*) The present Master of the Rolls has on several occasions stated that he would be prepared to hold the contrary of this proposition.(*f*) On none of such occasions, however, was this opinion strictly necessary to the decision of the case before the Court, nor does the fact that a majority of the Exchequer Chamber had expressly decided the contrary in *Gray* v. *Carr* (*g*) appear to have been present to his lordship's mind.

(5) Where the contract makes no provision for the payment of demurrage at either loading or discharging port, and at the same time creates in general terms a lien for demurrage, it has been held that such a lien may be exercised to secure the payment of damages for detention at the port of loading.(*h*) The correctness of this decision has been much questioned, and it is only to be supported, if at all, "on the ground that no other meaning can be given to the word demurrage in that charter-party, and no other extent to the lien to be created, than by including in the word 'demurrage' damages for detention."(*i*) If the precise question raised in *Bannister* v. *Breslauer* is ever raised again, it seems doubtful whether that case will be followed—at any rate if the lien clause is part of a general printed form, containing blanks for the insertion of particular provisions, so as to enable the Court to infer that it was left standing *per incuriam* and has "no application at all and therefore no meaning" with reference to the particular provisions that may have been inserted in the case under consideration.(*k*)

For a converse case, see *Francesco* v. *Massey*, L. R. 8 Ex. 101, where there was a clause fixing the number of lay days for loading, and another clause prescribing the rate of discharge, followed by a stipulation for days on demurrage, which the Court seems to have assumed to relate to the loading as well as the discharging.

(*e*) *Gray* v. *Carr*, L. R. 6 Q. B. 522.

(*f*) *Kish* v. *Cory*, L. R. 10 Q. B. at p. 560; *Sanguinetti* v. *Pacific, &c., Co.*, 2 Q. B. D. at p. 252; *Harris* v. *Jacobs*, 15 Q. B. D. at p. 250.

(*g*) L. R. 6 Q. B. 522.

(*h*) *Bannister* v. *Breslauer*, L. R. 2 C. P. 497; accepted as law in *Francesco* v. *Massey*, L. R. 8 Ex. 101, and per Lord Coleridge, C.J., in *Kish* v. *Cory*, L. R. 10 Q. B. at p. 558.

(*i*) Per Bowen, L.J., *Clink* v. *Radford* (1891), 1 Q. B. at p. 631; per Lord Esher, M.R., at p. 629. And see per Brett, J., in *Gray* v. *Carr*, L. R. 6 C. P. at p. 536; per Channell, B., S.C. p. 546; and per Cockburn, C.J., *Christoffersen* v. *Hansen*, L. R. 7 Q. B. at p. 515.

(*k*) See per Kelly, C.B., in *Gray* v. *Carr*, L. R. 6 Q. B. at p. 557; but see *McLean* v. *Fleming*, L. R. 2 H. L. Sc. 128, 138, per Lord Colonsay.

What Lien the Owner and Master have when the Ship is chartered.

Possession is essential to lien.

§ 301. In order that the shipowner and the master as his agent may, without express agreement, retain their lien on the goods, it is necessary that they should be legally in possession of the ship; for a person who has not, in law, the possession of the goods, cannot have a lien on them, unless such right has been expressly reserved.(*l*) It follows, that when the owner of a ship demises it and gives up the possession of the ship to the charterers, in such a way that the master ceases to be his servant and becomes the agent of the charterers, although the master will still have a lien for the freight for his new principals the charterers, the shipowner will have no such lien on the goods, unless he has expressly reserved it by agreement.(*m*)

When possession of ship given to charterer owner's lien may be lost.

The shipowner's lien depending in these cases upon his possession of the ship, the real question always is, whether, having regard to the whole of the charter-party, it was the intention of the parties that the owner should part with the control over the ship for a given time, or that he should retain the possession and allow the charterer the use of her. The Courts, however, now require that strong and distinct terms shall be used before they will put a construction upon the agreement which will deprive the shipowner of his lien.

But although by the terms of some charter-parties the owners retain such control over the ship as to be considered in the legal possession of ship and goods during the voyage, by means of the master and crew as their servants, and consequently have a lien upon the latter for the stipulated hire of the ship;(*n*) there have been, on the other hand, many charter-parties which contain such apt and comprehensive words that the whole possession and control of the ship was considered to be thereby actually transferred from the owner to the charterer.(*o*) Where, for example, the ship is let for a term of years, and the lessee is to appoint and pay the master and crew, and provide for the repairs, the possession has been held to pass to him.(*p*)

But mere words denoting a demise of the ship do not, on the one hand, necessarily preclude the conclusion, that the possession

(*l*) Abbott, 13th ed. 245; *Hutton* v. *Bragg*, 7 Taunt. 14; dissented from as regards the application of the principle in *Christie* v. *Lewis*, 2 B. & B. 410; see pp. 442, 443, and p. 425; Angell on Carriers, 376.

(*m*) *Small* v. *Moates*, 9 Bing. 574, 589.

(*n*) Angell on Carriers, 376; *Saville* v. *Campion*, 2 B. & Ald. 503; *Christie* v. *Lewis*, 2 B. & B. 410; *Campion* v. *Colvin*, 3 B. N. C. 17; *Sandeman* v. *Scurr*, L. R. 2 Q. B. 86.

(*o*) See *Baumvoll, &c.*, v. *Gilchrest* (1892) 1 Q. B. 253 (revg. [1891] 2 Q. B. 310); (1893) A. C. 9; *Vallejo* v. *Wheeler*, 1 Cowp. 143; *Trinity House* v. *Clark*, 4 M. & S. 288; *Belcher* v. *Capper*, 4 M. & G. 502; *Reeve* v. *Davis*, 1 A. & E. 312. See also *Hutton* v. *Bragg*, 7 Taunt. 14, which, however, was not followed in *Christie* v. *Lewis*, 2 B. & B. 410.

(*p*) *Fowler* v. *Kymer* (or *McTaggart*), cited 3 East, 396.

What lien the shipowner and master have when ship is chartered.

of the ship has continued in the owner himself. While, on the other hand, although the charter-party contain no words of actual demise, there may be stipulations in it equivalent in their effect to an actual parting with the possession of the ship *pro hâc vice;* and the mere fact that the owners have appointed the master affords no presumption that they intend to retain possession of the ship.(*q*)

"It must be admitted," says Tindal, C.J., "that there is some contradiction in the authorities bearing upon the right of lien in the owners of a ship which is chartered, and that in the later cases the terms of actual demise have not been considered as affording so decisive a criterion of the intention of the contracting parties as was supposed to belong to them in the case of *Hutton* v. *Bragg*.(*r*) But when the several cases are closely examined, it will be found that the apparent conflict of authorities in this instance, as in all other questions arising upon the construction of written instruments, arises more from the variety of terms employed by the parties themselves in framing their contracts, than from difference of opinion in the judges who interpret them; for in each of the cases in which the shipowner's lien has been supported, notwithstanding terms in the charter-party of express demise, other stipulations will be found therein which are sufficient to rebut the inference that the owners meant to part with the possession of the ship. Thus in *Mitchell* v. *Scaife*,(*s*) *Birley* v. *Gladstone*,(*t*) *Yates* v. *Railston*,(*u*) *and Christie* v. *Lewis*,(*x*) there were terms that showed that the payment of the hire of the ship was to be either precedent to, or concomitant with, the delivery of the goods; whereas in *Small* v. *Moates*,(*y*) the lien of the owner was expressly reserved by the charter-party. In each case, the whole of the charter-party must be taken together and due effect given to the several clauses that counteract or qualify each other; and thus it often happens, that the same expression will bear different meanings and require a different interpretation, according to the context of the instrument in which they are found."(*z*)

The safest course for the shipowner to pursue in cases where he lets his ship by charter-party and wishes to preserve his lien, is, to reserve that right to himself, by an unequivocal declaration of intention in the charter-party, that he will retain the right of

(*q*) *Newberry* v. *Colvin*, 7 Bing. 190; *Colvin* v. *Newberry*, 1 C. & F. 283, revg. S.C. 8 B. & C. 166; and see per Lord Esher, M.R., (1892) 1 Q. B. at p. 259.

(*r*) 7 Taunt. 14.

(*s*) 4 Camp. 298.

(*t*) 3 M. & S. 205.

(*u*) 8 Taunt. 293.

(*x*) 2 Brod. & B. 410.

(*y*) 9 Bing. 574.

(*z*) *Belcher* v. *Capper*, 4 M. & Gr. at p. 540; cp. per Tindal, C.J., in *Dean* v. *Hogg*, 10 Bing. 345, 350.

lien upon the lading of the ship. And this course is now generally adopted.

For what amount of freight lien is enforceable

§ 302. The amount of freight for which a lien may be enforced depends of course upon the contract between the parties; and, where the amount of freight reserved is merely nominal, the goods being shipped on owner's account, the shipowner cannot, by a subsequent assignment to a third person, create a right to freight at any higher rate than that reserved by the bill of lading.(*a*) But in cases where the freight payable under the charter-party differs from that mentioned in the bill of lading, doubts have in some cases been entertained as to which amount could properly be insisted on before delivery of the goods. Where the charterer or his agent is also the consignee, and seeks delivery of his own goods, no such difficulty need arise; for as between him and the shipowner the charter-party is the contract, and the bill of lading is only a receipt for the goods.(*b*) He is therefore not entitled to delivery except upon payment of the freight stipulated in the charter-party, no matter what may be the contents of the bill of lading. The same rule is applicable when the bill of lading is presented by the charterer's agent,(*c*) unless he holds it as security for advances so as to be in the position of an indorsee for value.(*d*)

As against charterer or his agent.

As against assignee for value.

§ 303. If, however, a bill of lading given by the master of goods shipped by or on behalf of the charterer, gets into the hands of an assignee for value, he is entitled to delivery of the goods upon fulfilling the terms mentioned in the bill of lading. And it is immaterial, whether the indorsee in such case holds the bill of lading as purchaser of the goods therein mentioned, or as pledgee to secure advances made against it to the charterer.(*e*)

It was at one time held that where the bill of lading was indorsed by the charterer, not for the purpose of transferring the property in the goods, but as security for advances, the indorsee having no notice of the charter-party, the lien might be enforced against the indorsee for the full chartered freight, at least in a case where it would have been reasonable, having regard to the provisions of the bill of lading, that the indorsee should make inquiry, before

(*a*) *Keith* v. *Burrows*, 2 C. P. D. 163; 2 Ap. Ca. 636; and see *Mercantile Bank* v. *Gladstone*, L. R. 3 Ex. 233.

(*b*) *Rodoconachi* v. *Milburn*, 17 Q. B. D. 316; 18 *ib.* 67; and cases cited 17 Q. B. D. at pp. 319, 320; *Restitution S.S. Co.* v. *Pirie*, 64 L. T. 492 (note), per Lord Esher, M.R.

(*c*) *Gledstanes* v. *Allen*, 12 C. B. 202; *Faith* v. *East India Co.* 4 B. & Al. 630; *Kern* v. *Deslandes*, 10 C. B. N. S. 205; *Pearson* v. *Goschen*, 17 *ib.* 352; see also *Tate* v. *Meek*, 8 Taunt. 280; *Small* v. *Moates*, 9 Bing. 574; *Campion* v. *Colvin*, 3 B. N. C. 17; cp. *McLean* v. *Fleming*, L. R. 2 H. L. (Sc.) 128, at pp. 133, 136.

(*d*) See *infra* § 304.

(*e*) See *Fry* v. *Chartered Bank*, L. R. 1 C. P. 689; *Foster* v. *Colby*, 3 H. & N. 705; *Shand* v. *Sanderson*, 4 *ib.* 389; *Gilkison* v. *Middleton*, 2 C. B. N. S. 134; per Willes, J., *Chappel* v. *Comfort*, 10 C. B. N. S. 810; per Byles, J., *Kern* v. *Deslandes*, *ib.* 205; and see *Howard* v. *Tucker*, 1 B. & Ad. 712, where the bill of lading stated that the freight had been paid at the port of loading.

advancing his money, as to the terms on which the goods were to be carried.(*f*) But at the present day it would require very strong words in the bill of lading to render a *bonâ fide* indorsee, without notice of the charter-party, liable for the freight payable under the charter-party for the whole cargo.

Thus, in *Fry* v. *Chartered, &c., Bank of India*,(*g*) a charter-party contained the following clause:—"*The ship to have a lien on cargo for freight*, £3 10*s*. *per ton of fifty cubic feet*, ... *to be paid to the captain or his agent on right delivery at port of discharge* . . . . *the freight to be paid on unloading and right delivery of the cargo*." The charterers shipped part of the cargo themselves under a bill of lading containing the following clauses:—"*freight for the said goods payable in Liverpool as per charter-party*." The charterers having indorsed this bill of lading to A., for valuable consideration and without notice of the charter-party, it was held, that as against A. the shipowner had a lien on the goods included in the bill of lading, for the freight due for these goods, at the rate of £3 10*s*. a ton, and not for the whole of the freight payable under the charter-party. And it was explained that the bill of lading referred to the charter-party for the purpose of determining what the rate of freight was, and not what was the total amount payable.

As against charterer's agent who is under advances to him.

§ 304. In some of the earlier cases, where the bill of lading holder was the agent of the charterer, the fact that he was under advances, for which he held the bill of lading as security, did not alter his liability to pay the full charter freight, even where the master was authorised by the charter-party "to sign bills of lading at any rate of freight without prejudice to the charter-party."(*h*) The tendency of later decisions has, however, been more favourable to holders of bills of lading, it having been explained that the second part of this clause is not intended to render them liable to pay freight according to the charter-party, but merely to preserve the shipowner's right to recover it from the charterer.(*i*) And it may now be affirmed that, where the agent of a charterer, acting *bonâ fide*, holds a bill of lading for goods shipped by or on account of the charterer, as security for an advance made against it, he cannot be required to pay more freight than that mentioned in the bill of lading, if either he took it without notice of the terms of the charter-party, or it was given in pursuance of those terms.(*k*)

(*f*) *Small* v. *Moates*, 9 Bing. 574; but see *Foster* v. *Colby*, 3 H. & N. at p. 717, per Bramwell, B.

(*g*) L. R. 1 C P. 689; per Montagu Smith, J., at p. 693.

(*h*) *Gledstanes* v. *Allen*, 12 C. B. 202; *Kern* v. *Deslandes*, 10 C. B. N. S. 205.

(*i*) Per Pollock, C.B., *Shand* v. *Sanderson*, 4 H. &. N. 389.

(*k*) See *Gilkison* v. *Middleton*, 2 C. B. N. S. 134; *Foster* v. *Colby*, 3 H. & N. 705; *Shand* v. *Sanderson*, *ib.* 389; *Fry* v. *Chartered, &c., Bank*, L. R. 1 C. P. 689.

§ 305. Where the ship has been chartered in such terms that the owner retains his right of lien, and the charterer employs her as a general ship, the master signing bills of lading for the goods of the various consignors, the shipowner's lien for freight will be enforceable for that amount only which is mentioned in the bill of lading: the principle being that a shipper putting his goods on board a ship, as a general ship, on the faith of a bill of lading signed by a person whom the shipowner has allowed to bear the character of master, in entitled to receive his goods at the end of the voyage on payment of the freight reserved by the bill of lading. The result is the same whether the right to delivery of the goods remains in the same person during the voyage, or is transferred to a stranger, to whom the bill of lading is indorsed for a valuable consideration.(*l*) And the same principle has been applied as between a shipowner and a shipper of goods on a general ship, without notice of the charter-party, who took no bill of lading, but merely a receipt for his goods.(*m*)

As against shippers and those claiming under them, where ship used by charterer as general ship.

§ 306. And this principle is not affected by a clause in the bill of lading incorporating by reference the conditions of the charter-party; for such a clause brings in only those conditions of the charter-party which are applicable to the contract in the bill of lading. Therefore, where goods were by bill of lading deliverable to named consignees, "freight . . . . payable at the rate of 22s. 6d. per ton," and the bill of lading contained a clause, "other conditions as per charter-party," and the charter-party provided *inter alia* for freight at the rate of £1 11s. 3d. per ton, and gave the master liberty "to sign bills of lading as presented, at any rate of freight," it was held that the rate of freight named in the charter-party was not incorporated in the bill of lading, and that the consignees were entitled to delivery of their goods on payment of the lower rate.(*n*)

Charter-party rate of freight not incorporated by reference if inconsistent with that mentioned in bill of lading.

From this decision it seems to follow that, as between shipowners and shippers or consignees, and persons claiming under them, mere notice of a charter-party is not sufficient to entitle the shipowner to a lien for freight at the full charter-party rate.(*o*) In order to have this effect, it would seem that the notice must be sufficient to convey an intimation that the master's authority

(*l*) See per Tindal, C.J., *Small* v. *Moates*, 9 Bing. 591, 592; per Cockburn, C.J., *Sandeman* v. *Scurr*, L. R. 2 Q. B. 97; *Mitchell* v. *Scaife*, 4 Camp. 298; *Faith* v. *East India Co.*, 4 B. & Ald. 630; *The Emilien Marie*, 44 L. J. Ad. 9.

(*m*) *The Stornoway*, 51 L. J. Ad. 27; see also *Tharsis, &c., Co.* v. *Culliford*, 22 W. R. 46, where the goods were shipped under a sub-charter, which did not preserve the liens of the original charter-party.

(*n*) *Gardner* v. *Trechmann*, 15 Q. B. D. 154. The charter-party also contained a provision for payment in advance of the difference between bill of lading and chartered freight; but this does not seem to have affected the decision on this point.

(*o*) And see per Willes, J., *Chappel* v. *Comfort*, 10 C. B. N. S. at p. 810. Cp., however, per Lord Romilly, M.R., *Peek* v. *Larsen*, L. R. 12 Eq. at p. 383.

to give bills of lading is limited, a fact which cannot at any rate be inferred from the mere existence of a charter-party.(*p*)

Liens conferred by charter-party when enforceable against bill of lading holder.

§ 307. In accordance with the principles above stated, if the charter-party gives the shipowner a lien for claims other than freight, such as dead freight and demurrage, this lien cannot, in general, be enforced against the owner and consignee of goods shipped under a bill of lading, or persons claiming by indorsement from him, unless it is expressly reserved by that document;(*q*) though it is otherwise where the consignee is also, in effect, the charterer of the ship.(*r*) A provision for payment of freight as per charter-party is not sufficient for this purpose.(*s*) In order to preserve such a lien, the clause "and other conditions as per charter-party"(*t*) is frequently added in bills of lading immediately after the stipulation for payment of freight. We have seen (*u*) that this clause is ineffective to vary the rate of freight named in the bill of lading. It is, however, sufficient to keep alive against bill of lading holders all liens created by the charter-party which are applicable to and not inconsistent with the terms of the bill of lading,(*x*) its effect being "to introduce . . . . all those provisions of the charter-party which would have to be performed by the receiver of the goods—that is, all the conditions which would operate as against the consignee."(*y*)

"Other conditions as per charter party."

Cesser of liability clause in the charter-party.

§ 308. It is a common practice, especially where the charterer acts merely as an agent, to insert in charter-parties a "cesser of liability clause," more often called a "cesser clause," in some such terms as the following:—"Charterer's liability to cease on completion of the loading, the owner having a lien for freight, dead freight, demurrage, and average."

Construction of cesser clause.

The accepted rule for the construction of this clause is that it relieves the charterer from all liability arising under the charter-party after the completion of the loading, or other event upon which the clause is expressed to take effect:—"The words of the clause must necessarily absolve from all future liability, or mean nothing,"(*z*) and that the charterer is relieved from every liability,

(*p*) See per Bramwell, B., *Foster* v. *Colby*, 3 H. & N. at p. 717.

(*q*) Per Willes, J., *Chappel* v. *Comfort*, 10 C. B. N. S. 810; per Parke, B., *Smith* v. *Sieveking*, 4 E. & B. 945; 5 *ib.* 589; per Ld. Chelmsford, *McLean* v. *Fleming*, L. R. 2 H. L. Sc. at p. 133.

(*r*) *McLean* v. *Fleming*, L. R. 2 H. L. (Sc.), 128, 133, 136.

(*s*) *Chappel* v. *Comfort*, *ubi sup.*; *Smith* v. *Sieveking*, 4 E. & B. 945; 5 *ib.* 589.

(*t*) See this clause further considered, *infra* § 345.

(*u*) *Supra* § 306.

(*x*) Accordingly the demurrage lien has been held to be incorporated in *Wegener* v. *Smith*, 15 C. B. 285; *Porteous* v. *Watney*, 3 Q. B. D. 223, 534; *Gray* v. *Carr*, L. R. 6 Q. B. 522; *q.v.* also, as to "dead freight," per Cleasby, B., at p. 532; per Channell, B., at p. 544; per Bramwell, B. at pp. 552, 553; and per Kelly, C.B., at, p. 555.

(*y*) Per Lord Esher, M.R., *Serraino* v. *Campbell*, (1891) 1 Q.B. at p. 289. See further as to the effect of this clause on the rights and liabilities of bill of lading holders *infra* §§ 344, 345.

(*z*) *French* v. *Gerber*, 1 C. P. D. 737 (per Cur. at p. 744); 2 *ib.* 247, per Bramwell, L.J., at p. 253; *Oglesby* v. *Yglesias*,

whether arising before or after such event, in respect of which the charter-party gives to the shipowner a lien on the cargo. In other words, the cesser clause in a charter-party is, in the absence of language showing an intention to restrict it,(*a*) at least co-extensive with the lien clause in the charter-party;(*b*) but is, as regards liabilities antecedent to its coming into operation, no wider,(*c*) unless perfectly clear and unequivocal language is used.(*d*) The extent and meaning of the lien clause has been already considered(*e*).

Operation of cesser clause not affected by subsequent circumstances.

The operation of the cesser clause is not affected by bills of lading having been given which do not preserve the liens created by the charter-party,(*f*) unless perhaps in a case where the taking of such bills of lading was itself a breach of the charter-party.(*g*) Nor does the fact that the charterer is also the consignee affect his immunity from liability under the charter-party,(*h*) although if he is also the holder, as consignee or indorsee, of a bill of lading which incorporates the conditions of the charter-party, he is liable as such for a breach of those conditions.(*i*)

Charterer sometimes liable as bill of lading holder.

Holder of bill of lading not always liable to action.

§ 309. It is also to be remembered that, apart from the cesser clause which confers immunity upon the charterer, the person who presents the bill of lading may, as pointed out above,(*k*) hold it only as a pledgee or agent, so as not to be liable under the Bills of Lading Act,(*l*) as a party to the contract contained in it; and that a repudiation by such a holder, at the time of presentation, of the liabilities created by the bill of lading, may prevent any contract being implied from the acceptance of the goods, in which case no action will lie against him after delivery of the goods.(*m*)

§ 310. From the foregoing considerations it will be seen that

E. B. & E. 930; *Hick* v. *Rodocanachi*, 64 L. T. 138; (revd. on another point, 65 *ib.* 300; (1891) 2 Q. B. 626). See, however, per Mellish and Baggallay, L.JJ., 2 C. P. D. pp. 250–252.

(*a*) As in *Pedersen* v. *Lotinga*, 28 L. T. 267, and *Lister* v. *Van Haansbergen*, 1 Q. B. D. 269.

(*b*) *French* v. *Gerber*, 1 C. P. D. 737, 744; 2 *ib.* 247, 250–252; *Sanguinetti* v. *Pacific, &c., Co.*, 2 Q. B. D. 238; *Francesco* v. *Massey*, L. R. 8 Ex. 101; *Kish* v. *Cory*, L. R. 10 Q. B. 553, 558, 559; *Bannister* v. *Breslauer*, L. R. 2 C. P. 497.

(*c*) *Clink* v. *Radford*, (1891) 1 Q. B. 625; *Dunlop* v. *Balfour*, (1892) 1 Q. B. 507; *Christoffersen* v. *Hansen*, L. R. 7 Q. B. 509.

(*d*) For such a case see *Milvain* v. *Perez*, 2 E. & E. 495.

(*e*) *Supra*, §§ 298–300.

(*f*) Per Lord Esher, M.R., *Restitution S.S. Co.* v. *Pirie*, 64 L. T. 492 (note); *Hick* v. *Rodocanachi*, *ib.* 138 (revd. on another point, *ubi sup.*)

(*g*) See *Hick* v. *Rodocanachi*, 64 L. T. 138.

(*h*) *Sanguinetti* v. *Pacific, &c., Co.*, 2 Q. B. D. 238.

(*i*) *Gullischen* v. *Stewart*, 11 Q. B. D. 186; 13 *ib.* 317; overruling, as it seems, *Barwick* v. *Burnyeat*, 36 L. T. 250, which case, however, was not cited in argument; *Bryden* v. *Niebuhr*, 1 C. & E. 241.

(*k*) §§ 156, 268.

(*l*) 18 & 19 Vict. c. 111.

(*m*) *S.S. County of Lancaster* v. *Sharp*, 24 Q. B. D. 158; but the agent may bind his principal to pay charges in respect of which there is a lien, *Hingston* v. *Wendt*, 1 Q. B. D. 367. See also *Smidt* v. *Tiden*, L. R. 9 Q. B. 446, where the parties never having been *ad idem*, the bill of lading was no evidence of a contract at all.

Importance and risk of enforcing lien.

the lien which the master has on the cargo is often the only means open to the shipowner of enforcing the claims in respect of which it is given, while on the other hand its improper enforcement will expose both owner and master to an action for wrongful detention of the cargo. It is therefore of the last importance that the latter should know the extent of his right of lien against holders of bills of lading, and should, where it exists, insist upon it until he has obtained payment or proper security.

How the Lien may be lost or extinguished.

By payment.

§ 311. Payment of course puts an end to the lien, and in the absence of an agreement to the contrary, anything which is accepted as payment has the same effect.(*n*) Accordingly, where the owner of a ship having a lien on the goods, until the delivery of good and approved bills, took a bill of exchange in payment, and, though he objected to it at the time, afterwards negotiated it, it was held, that such a negotiation amounted to an appoval of the bill by him, and to a relinquishment of his lien on the goods.(*o*)

By tender.

Tenders dispensed with.

§ 312. The mere fact that the master claims more than is due to him, will not alone put an end to his lien for that which is due. But a tender of the right amount, even though it is refused, will entitle the consignee to delivery;(*p*) and if the demand of the larger sum is so made as to amount to an announcement by the master that it is useless to tender any smaller sum, for that if tendered it would be refused, this will, generally speaking, amount to a dispensation with any tender.(*q*)

Further, at all events in the case of a lien for an unliquidated amount, as, for example, where the claim is for general average, the lien will be lost and the consignee will be exempted from the necessity of making a tender, if the master refuses to produce papers and information which are necessary to enable the consignee to verify the claim.(*r*)

Voluntarily giving up possession destroys lien.

§ 313. As at common law a "lien" is a right to retain possession, it follows that if the master once parts voluntarily with the possession of the goods in his own or his agent's hands, he loses his lien upon them, and is not authorised by law to reclaim them.(*s*)

But where, in obedience to law and to revenue regulations, he

(*n*) *Bunney* v. *Poyntz*, 4 B. & Ad. 568; *Hewison* v. *Guthrie*, 2 Bing. N. C. 755.

(*o*) *Horncastle* v. *Farran*, 3 B. & Ald. 497.

(*p*) See per Mathew, J., *Huth* v. *Lamport*, 16 Q. B. D. at p. 445.

(*q*) *The Norway*, B. & L. 377, 396, 409; *Kerford* v. *Mondel*, 28 L. J. Ex. 303.

(*r*) *The Norway*, B. & L. at p. 397; *Huth* v. *Lamport*, 16 Q. B. D. 734, 736, per Lord Esher, M.R.

(*s*) Angell on Carriers, 370; Smith's Merc. Law, 10th ed. 704; *Artaza* v. *Smallpiece*, 1 Esp. 23.

lands goods at a particular wharf or dock, he does not thereby lose his lien on them for freight, even although he gives no notice to the Dock Company to retain the cargo until the payment of the freight;(*t*) for the wharfinger becomes, in such a case, the master's agent, and the goods remain in the constructive possession of the master; but in case of goods landed under the Merchant Shipping Act, 1862, notice to retain for the lien should be given.(*u*)

Wharfinger in some cases agent to retain possession.

And where goods are not required to be landed at any particular dock, and the common practice is to land them at a public wharf, and to direct the wharfinger not to part with them until the charges upon them are paid, in this case also the wharfinger becomes the master's agent, and the goods remain constructively in the possession of the master, subject to his lien.(*x*)

It seems also that the master does not lose his lien "by placing the goods in a warehouse over which he or the owner or consignee of the ship has exclusive control," and that this would be so even at a foreign port, where the provisions of the Merchant Shipping Act, 1862 (*u*) have no force.(*y*)

Goods in warehouse under ship-owner's control.

If the master is induced by fraud to part with the possession of the goods, the lien will revive if the master recover possession of them.(*z*) And if he is turned out of possession, when the ship is captured, this will not deprive him of his lien for freight in case of recapture.(*a*)

Where possession was abandoned through fraud or capture, lien may be revived.

When the Master may sue in his own name for Freight and Demurrage.

§ 314. By English law, an agent may sue in his own name on a contract made by him on behalf of his principal, (1) where he has a special property in the subject-matter of the contract; and (2) where the contract was made with him in his own name for an undisclosed principal.(*b*) The master has a special property in his ship, and therefore, where the freight has been earned under a contract to which he was one of the contracting parties, or under a bill of lading signed by himself, he may bring an action in his own name for the freight due on the delivery of the goods:(*c*) it being remembered that the failure of the master to

For freight.

(*t*) Per Lord Ellenborough, *Wilson* v. *Kymer*, 1 M. & Sel. 157, 162; Angell on Carriers, 371; Smith's Merc. Law, 10th ed. 705; *Faith* v. *East India Co.*, 4 B. & Ald. 630.

(*u*) 25 & 26 Vict. c. 63. As to the preservation of liens on goods landed under this Act, see ss. 68 *et seq.*, § 328 *infra*.

(*x*) Angell, 372; Smith, M. L. 705.

(*y*) *Mors-le-Blanck* v. *Wilson*, L. R. 8 C. P. 227. The decision on the first point in this case can only be accepted with reserve. See *Hammond* v. *Bussey*, 20 Q. B. D. 79.

(*z*) Angell, 374.

(*a*) Abbott, 12th ed. 236; *Ex parte Cheesman*, 2 Eden, 181.

(*b*) Smith's Merc. Law, 10th ed. 170, 171, and cases there cited.

(*c*) Story on Agency, 116; *Shields* v. *Davis*, 6 Taunt. 65.

insist on payment before delivery does not deprive him of the right to sue the consignor on his contract to pay freight.(*d*)

Under bill of lading.

As pointed out by Sir James Mansfield, "the bill of lading usually specifies 'that the captain is to deliver the goods on payment of the freight,' and if he delivers them without such payment he becomes liable to his owner for so doing, It has been held, therefore, that he may maintain an action against the consignee upon an *implied promise* to pay the freight, in consideration of the master's letting the goods out of his hands before payment."(*e*)

Under charter-party.

If a master enter into a charter-party under seal, purporting to be between him and the charterer, treating himself as owner, he alone can sue upon it;(*f*) and the same is the case where the master executes in his own name, describing himself as owner; for evidence is then inadmissible to contradict the written instrument.(*g*) But upon a charter-party entered into by the master in his own name simply, on behalf of the ship and not under seal, either master or owner may sue for the freight.(*h*)

Master part owner.

And, *à fortiori*, a master who is a part owner, and who enters in his own name into a charter-party with merchants, may sue upon it *alone, without joining the other part owners*, because the contract was made with such master alone, and because he had a personal interest in it, although he was acting partly on his own behalf and partly as agent for his co-owners.(*i*)

But where, by a charter-party (not under seal), made by the master, the charterer agreed to pay freight generally, without saying to whom, it was held that, the owner having received the freight, the master could not afterwards maintain an action for it against the charterer, although the master had given the charterer notice not to pay it to any one but himself.(*k*)

Demurrage and other claims under bill of lading.

§ 315. It has been said that a master may sue the consignor upon any contract in the bill of lading. And this is so, at least where the bill of lading is given by the master in his own name.(*l*)

Accordingly, he may maintain, in his own name, an action for demurrage against a consignee who accepts goods under a bill of lading given by the master, at the bottom of which is a memorandum that the ship is to be cleared in a certain number of days, and that a certain sum per day demurrage is to be paid after that

(*d*) *Supra* § 268.

(*e*) *Brouncker* v. *Scott*, 4 Taunt. 4.

(*f*) See per Lord Chelmsford, C., *Bristowe* v. *Whitmore*, 28 L. J. Ch. 810; and see *Chesterfield, &c., Co.* v. *Hawkins*, 3 H. & C. 677; Abbott, 13th ed. 222. This doctrine is of less importance since the Judicature Acts; see 36 & 37 Vict. c. 66, s. 25; R. S. C. 1883, O. XVI.

(*g*) *Humble* v. *Hunter*, 12 Q. B. 310.

(*h*) *Higgins* v. *Senior*, 8 M. & W. at p. 844; *Beckham* v. *Drake*, 9 ib. pp. 92, 96; and see *Priestley* v. *Fernie*, 3 H. & C. 977.

(*i*) *Seeger* v. *Duthie*, 8 C. B. N. S. 45, 56.

(*k*) *Atkinson* v. *Cotesworth*, 3 B & C. 647.

(*l*) See per Lord Denman, C.J., *Sims* v. *Bond*, 5 B. &. Ad. at p. 393.

time; for the consignee, by adopting the bill, makes himself liable to demurrage as well as to freight.(*m*) And, *à fortiori*, he can sue in his own name for demurrage stipulated in a bill of lading given by himself, or for a breach of any of the express conditions thereof, when he is owner or part owner, as well as master, of the ship.(*n*)

But the master of a ship, not being part owner, cannot maintain an action in his own name upon *an implied* promise to pay demurrage, as it is a claim made by him upon a subject-matter in which he has no interest.(*o*)

Not on implied contract for demurrage.

Re-delivery to Consignor.

§ 316. It sometimes happens that in consequence of the insolvency of the consignee, or for some other reason, the consignor requires the goods to be re-delivered to him at the port of loading. The law applicable to such a case has been clearly laid down by Lord Campbell, C.J., in the case of *Tindall* v. *Taylor*,(*p*) in the following terms:—

"'A merchant who has laden goods' on a general ship, 'cannot insist on having them re-landed and delivered to him, without paying the freight (*q*) that might become due for the carriage of them, and indemnifying the master against the consequences of any bill of lading, which has been signed by him.' . . . . When goods were laden to be carried on a particular voyage, there was a contract that the master should carry them in the ship, upon that voyage, for freight; and the general rule is, that a contract once made cannot be dissolved, except with the consent of both the contracting parties. By the usage of trade, the consignor, if he re-demands such goods in a reasonable time before the ship sails, is entitled to have them delivered back to him, on his paying the freight that might become due for their carriage, and on indemnifying the master against the consequences of any bills of lading signed for them; but there are conditions to be performed before the original contract can be affected by the demand of the goods. It would be most unjust to the owners and master of the ship if we were to hold, that upon a simple demand at any time the goods must be delivered back in the port of outfit; and *Thompson* v. *Small*(*r*) is no authority for such a doctrine.

To consignor at port of loading on his paying freight and giving indemnity.

(*m*) *Jesson* v. *Solly*, 4 Taunt. 52; *Harman* v. *Clarke*; *Same* v. *Mant*, 4 Camp. 159, 161.

(*n*) *Cawthron* v. *Trickett*, 15 C. B. N. S. 758; *Jesson* v. *Solly*, 4 Taunt. 52; *Stindt* v. *Roberts*, 2 C. B. 712.

(*o*) *Brouncker* v. *Scott*, 4 Taunt. 4; *Evans* v. *Forster*, 1 B. & Ad. 118.

(*p*) 4 E. & B. 227; and see *Thompson* v. *Trail*, 2 C. & P. 334; 6 B. & C. 468; *Davidson* v. *Gwynne*, 12 East, 381.

(*q*) See cases cited *supra* §§ 269, 272, 283.

(*r*) 1 C. B. 328; *infra* § 317.

When consignor may insist on goods being relanded and returned to him.

"After the master, at the request of the defendant, had signed bills of lading for the goods, making them deliverable to a consignee at the port of destination, one of which bills he had transmitted to the consignee, it is quite clear that the defendant could have no right to the re-delivery of the goods in the port of outfit on merely demanding them."

But if the master, having a lien on the goods for freight, on the consignor claiming justifiably, but without any tender of freight, to stop the goods *in transitu*,(s) refuses to deliver, not on the ground of his right to earn the freight, but because he has signed bills of lading to a third person, he thereby dispenses with a tender of freight, and is liable to an action by the consignor for conversion of the goods.(t)

Without tender of freight. Where no lien for freight, and no bill of lading.

§ 317. In some cases, where by the terms of the charter-party the shipowners and the master have no lien on the goods put on board, and where no bill of lading has been transferred, the charterer has a right, upon paying the master's reasonable charges, to take the goods out of the ship before she leaves the loading port, if circumstances render it expedient to do so; and in such cases, the master would be liable if he refused to give up the goods when demanded. Thus in *Thompson* v. *Small*,(u) A. chartered a ship, of which B. was master and part owner, for a voyage from London to Sydney, for a gross sum of £1600, payable two months after clearance at the Custom House. A. bought goods of C., to be shipped on A.'s account on board the ship, and to be paid for before the ship left the port of London. The goods were shipped by C., who took from the mate receipts, which he kept, as for goods shipped on C.'s account. Two days after the goods were shipped, A. became insolvent, but did not become bankrupt, or take the benefit of the Insolvent Act, and being unable to perform his contract with C., agreed to rescind it, and signed an order directing B. to deliver the goods to C. The goods were demanded on behalf of C., C. offering to pay all reasonable charges attending such re-delivery and every lawful claim the shipowners might have upon them. B. having refused to deliver the goods to C., it was held, that, assuming the property in the goods to have passed to A. by the shipment, yet as A. had neither become bankrupt nor taken the benefit of the Insolvent Act, by the operation of the agreement and the delivery order given by A. the property in the goods revested in C., and the refusal of B., the master, to re-deliver the goods after the demand by C., and after the offer then made to pay reasonable charges and lawful claims, was a wrongful conversion, for which an action would lie against him;—Tindal, C. J., who delivered the judgment

(s) As to stoppage *in transitu*, see Chap. VII., *infra*.

(t) *Thompson* v. *Trail*, 2 C. & P. 334; 6 B. & C. 36.

(u) 1 C. B. 328.

of the Court, pointing out that the charterer "had the entire use of the ship under the charter; and there was nothing to prevent him from taking out the cargo before the ship sailed, if circumstances had rendered it expedient and changing such cargo for another, or even from sending the ship empty to Sydney, or from loading her entirely with goods of other persons, the freight of which had been paid to him in advance, there being no agreement on his part to put a full cargo, or indeed any cargo, on board; and the payment for the hire of the ship being made quite independent of the delivery of any cargo;" and that as the sum stipulated was not payable until two months after the ship had cleared, there could be no lien for freight not then due.

When consignor may insist on goods being relanded and returned to him.

§ 318. Where by the terms of shipment no goods were to be received on board unless a "clean receipt" could be given, and the shipowners, having received the goods, refused to give a "clean receipt" or to re-deliver the goods, it was held by Wills, J., that they were guilty of a conversion. The decision was afterwards reversed, however, on the ground that the plaintiffs had parted with the property in the goods to purchasers, before demanding them back from the shipowners.(*x*)

Where master refuses to comply with terms of shipment,

A shipper of goods on board a general ship without notice of a charter-party is not bound to inquire as to whether there is one, and therefore, if the master refuses, after shipment, to sign bills of lading except subject to a charter-party which gives the shipowner a lien for dead freight and demurrage, and the shipper objects to these provisions, the latter is entitled to have the goods returned to him free from any claim by the shipowner.(*y*)

or to give bills of lading except under terms of charter-party of which shipper had no notice.

If the ship meets with a disaster before completing her voyage, this, as we have seen, will not necessarily entitle the consignor to delivery of the goods without tendering the freight, since the shipowner may still earn the freight by carrying on the goods in another bottom, or in his own ship, if she can be repaired within a reasonable time.(*z*)

Tender of freight not excused by disaster to ship.

Delivery at Port of Discharge.

§ 319. While the goods are at sea, and after their arrival in dock, until delivery is made or something equivalent to delivery is done, the bill of lading is "the symbol of property, and for the purpose of conveying a right and interest in the property is the property itself."(*a*) It is therefore in general the master's duty, after arriving at the port of discharge, to deliver the goods

To whom master must deliver at port of discharge.

To person producing bill of lading.

(*x*) *Armstrong* v. *Allan*, 67 L. T. 417; 738.

(*y*) *Peek* v. *Larsen*, L. R. 12 Eq. 378; and see *The Stornoway*, 51 L. J. Ad. 27; *Tharsis, &c. Co.* v. *Culliford*, 22 W. R. 46; *infra* § 331, note (*u*).

(*z*) See cases cited *supra* § 272; *The Ettrick*, 6 P. D. at pp. 128, 129.

(*a*) *Barber* v. *Meyerstein*, L. R. 4 H. L. 317 (*infra* § 340). See especially per Ld. Hatherley, C., at pp. 326, 330; explained in *Sewell* v. *Burdick*, 10 Ap. Ca. 74, 80–82.

upon the terms contained or incorporated in the bill of lading(*b*) to the consignee named therein, on his producing the bill of lading unindorsed, or to any one producing it with a genuine indorsement by the consignee,(*c*) or by the shipper where no consignee is named; on payment, in either case, of freight and other lawful charges. And for the same reason, the master is neither bound nor indeed entitled to deliver the goods except on production of the bill of lading; for if by reason of his so delivering them they should get into possession of a third person, who should refuse to give them up, the shipowner and the master himself would be responsible.(*d*) Therefore, if the bill of lading is not forthcoming, the master should, generally speaking, refuse to deliver even to the consignee named in the bill of lading, except upon receiving a proper indemnity.(*e*)

To whom master must deliver when bills of lading drawn in sets.

Where no notice of other claimants, to first producer.

§ 320. It may happen, however, where bills of lading are drawn in sets, that the shipper or consignee has indorsed one bill of lading to one person, and has retained a second himself, or has indorsed it to another person. In such a case the master is justified, if he has no notice or knowledge of any other claim to the goods, in delivering them to the first person who presents a bill of lading with an apparently regular title to it, whether by indorsement or as consignee. This is the effect of the clause, "the one of which bills being accomplished, the others to stand void."(*f*)

Glyn v. *East and West India Dock Co.*

In *Glyn* v. *East and West India Dock Co.*,(*f*) the consignees indorsed one bill, marked "first," of a set of three, to a bank to secure advances, retaining another marked "second" in their own hands. On the arrival of the ship, the goods were entrusted to the defendants under a stop for freight. The consignees produced the bill marked "second," unindorsed, to the defendants, who, on the stop being removed, *bonâ fide* and without notice or knowledge of the bank's claim, delivered the goods upon the consignee's delivery orders. On the face of the bills of lading were the words, "the master or purser hath affirmed to three bills of lading, all of this tenor and date, the one of which bills being accomplished, the others to stand void." In an action by the

(*b*) See §§ 302–307 *supra*. It is to be remembered that where the consignee is also the charterer, the master may insist on his fulfilling the terms of the charter-party, though they may be more onerous than those of the bill of lading.

(*c*) Per Ld. Blackburn, *Glyn* v. *East and West India Dock Co.*, 7 Ap. Ca. at p. 610; *Bird* v. *Brown*, 4 Ex. 786; *Gatliffe* v. *Bourne*, 4 B. N. C. 314; 3 M. & G. 643 (Ex. Ch.); 7 *ib.* 850 (H. L.).

(*d*) *The Stettin*, 14 P. D. 142, 147; *Erichsen* v. *Barkworth*, 3 H. & N. 601; 894; per Gibbs, C.J., *Nathans* v. *Giles*, 5 Taunt. 574. In view of the decision in *The Stettin*, it would seem to be equally the master's duty to insist on production of the bill of lading, whether the goods are made deliverable to a named consignee only, or "to order or assigns."

(*e*) *The Stettin, ubi sup.*

(*f*) *Glyn* v. *East and West India Dock Co.*, 10 Ap. Ca. 591; affg. 6 Q. B. D. 475; revg. 5 Q. B. D. 129; and see *The Tigress*, B. &. L. 38.

bank against the defendants for conversion of the goods, it was held, that the liability of the defendants with respect to delivery was neither greater nor less than that of the shipowner or master would have been; that a master would under the circumstances have been justified in delivering; and therefore that the defendants were not liable.

Where notice of adverse claimants.

§ 321. In *Fearon* v. *Bowers*,(*g*) a much earlier case, where two indorsees of different parts of the same bill of lading presented them at the same time, it appearing that according to the usage of trade the master was not concerned to examine who had the best right, it was held that the master had performed his duty by delivering the goods upon one of the bills of lading. The correctness of this decison, however, was long ago doubted on the high authority of Lord Tenterden,(*h*) whose doubt has recently received support in the House of Lords.(*i*) And the better opinion now is that if at the time of production of one bill of lading the master "has notice or probably even knowledge of another indorsement, he must deliver, at his peril, to the rightful holder, or interplead."(*k*)

Master delivers at his peril.

To whom master must deliver, when vendor gives notice to stop.

§ 322. If, before delivery, the vendor of the goods claims to stop them *in transitu* and requires their delivery to himself, the master is not entitled to retain the custody of them until he ascertains who is entitled to the delivery, "for it shall never be permitted to a carrier, by not delivering the goods, to vary the property and decide to whom they shall belong";(*l*) but he must deliver them to the vendor. "The vendor exercises his right of stoppage *in transitu* at his own peril; and it is incumbent on the master to give effect to that right so soon as he is satisfied that it is the vendor who claims the goods, unless he (the master) is aware of a legal defeasance of the vendor's claim. It is not necessary for the vendor to prove to the master that he (the vendor) has a right to stop the goods."(*m*)

Vendor must satisfy liens.

The master, therefore, who fails or refuses to deliver to a vendor properly claiming to stop *in transitu* renders himself liable to an action for conversion of the goods.(*n*) The vendor cannot, however, claim delivery without satisfying any lien which the master has upon the goods for freight and other charges in respect of them;(*o*) while, on the other hand, he cannot be called on to pay freight on goods expressed to be carried "freight free on owner's

(*g*) 1 H. Bl. 364 n.; 1 S. L. C. 9th ed. 766 (note to *Lickbarrow* v. *Mason*).

(*h*) Abbott, 5th ed. pt. iii. ch. 9, sect. 24; 13th ed. p. 714.

(*i*) See the judgments in *Glyn* v. *East and West India Dock Co.*, 7 Ap. Ca. 591.

(*k*) Per Lord Blackburn, 7 Ap. Ca. at p. 611; see §§ 322, 323 *infra*.

(*l*) Per Lawrence, J., *Bohtlingk* v. *Inglis*, 3 East, 381, 394. As to stoppage *in transitu*, see Chap. VII. *infra*.

(*m*) *The Tigress*, B. & L. 38, 45, per Dr. Lushington; see Benjamin on Sale, 4th ed. 885, 886.

(*n*) *Mills* v. *Ball*, 2 B. & P. 457; *Thompson* v. *Trail*, 2 C. & P. 334; 6 B. & C. 36.

(*o*) See *supra* §§ 290 *et seq.*

account," even though the ship has been, unknown to the master and the consignors, transferred to new owners before signature of the bills of lading;(*p*) nor can any more freight be demanded than that which is due for carriage of the goods of which delivery is required, notwithstanding that the carrier may be entitled by custom, as against the consignee, to a lien for the general balance of his account.(*q*)

We have seen above (*r*) that the consignor may, in a proper case, stop the goods and claim delivery at the port of loading, and on what terms this may be done.

Where conflicting claims, master should interplead.

§ 323. In the case of conflicting claims, the master, before he parts with the goods, should take care to require an indemnity from the person to whom he delivers. And if neither of the rival claimants is prepared to give such an indemnity as will afford security to the master and his owners, in case the delivery turns out to be wrongful, it is his duty, in a case of reasonable doubt, if in this country, to get the title to the goods judicially determined by interpleader proceedings;(*s*) and if abroad, he should consult the ship's agents, if any, or the British consul, before parting with the goods.

Mutual duties of master and consignee as to delivery.

Freighter not entitled to notice of arrival.

What master must do if consignee not ready.

§ 324. The discharge of the cargo is, as we have seen,(*t*) the joint duty of the shipowner and the merchant. The merchant is to be ready to receive in the usual manner, and the shipowner, his master and crew, to deliver in the usual manner.(*u*) On the one hand, the consignee is bound to watch for the arrival of the ship, and is not entitled to receive notice thereof from the master. On the other, if the goods are not received as soon as the master is ready to deliver them, he is nevertheless bound to wait during lay-days and days under demurrage, if any are stipulated, or, in the absence of stipulation, a reasonable time.(*x*) And if the consignee is not then ready and willing to produce the bill of lading, to pay the proper charges, and to receive the goods, the master may warehouse the goods for the benefit of those concerned, subject to the payment of freight and charges due to the owners of the ship.(*y*)

Indeed, where the landing of the goods at their destination

(*p*) *Mercantile, &c., Bank* v. *Gladstone*, L. R. 3 Ex. 233.

(*q*) *Oppenheim* v. *Russell*, 3 B. & P. 42.

(*r*) §§ 316–318.

(*s*) Per Dr. Lushington, *The Tigress*, B. & L. at p. 46; per Willes, J., *Meyerstein* v. *Barber*, L. R. 2 C. P. at p. 55; R. S. C. 1883, O. LVII.

(*t*) *Supra* § 150.

(*u*) Per Blackburn, J., *Ford* v. *Cotesworth*, L. R. 4 Q. B. at p. 134; L. R. 5 Q. B. 544 (Ex. Ch.).

(*x*) See cases cited *supra*, §§ 157, 151.

(*y*) *Cargo ex Argos*, L. R. 5 P. C. at p. 165; *Howard* v. *Shepherd*, 9 C. B. 297, per Maule, J., at p. 321. By the custom of the port of London, grain cargoes, if not demanded within twenty-four hours of the ship's arrival, may be discharged on the quay; *Aste* v. *Stumore*, C. & E. 319. And see 25 & 26 Vict. c. 63, s. 67, *infra* § 328; as to the preservation of liens in such a case, see § 313 *supra*.

was prohibited by the authorities there, and no consignee appeared to claim them, it was held that the master was justified in taking them back to the port of loading, and that his owners were entitled to recover from the shipper the expenses of so doing.(*z*) But he is not entitled in the absence of agreement or custom to that effect,(*a*) immediately on the arrival of the ship, and without notice to the consignee, to land the goods. And, *à fortiori*, he has no right to do so if the consignee is ready and willing to accept delivery, according to the terms of the bill of lading; and he will be liable to an action if under such circumstances he lands the goods on a wharf, and the consignee incurs loss or injury in consequence.(*b*) And this principle is not affected by the statutory powers (*c*) of a shipowner to enter and land goods on default of their owner.(*d*)

What master must do if consignee not ready.

Subject to the foregoing observations, although the general rule applicable to carriers and other persons contracting to deliver goods is, that a personal delivery is necessary, this rule does not apply to ships, the usages of trade having constituted a delivery on the usual wharf with notice to the consignee sufficient;(*e*) for a ship trading from one port to another has not the means of carrying the goods on land. In the United States, it has been decided that the wharf on which such delivery is made must be one which is suitable for the cargo which is to be placed upon it, and that if the goods are injured in consequence of the insufficiency of the wharf, the ship is liable as if no delivery had taken place; that the goods must not be piled on the wharf promiscuously with those of other consignees, but that the master must, as far as possible, separate the different consignments, so as to render them accessible to their respective owners;(*f*) that the delivery must be on a proper day, as regards the weather, and must also be on a business day, and at a proper hour of such day; that the liability of the ship continues until the consignee has had a reasonable time to examine the goods, to determine whether he will accept them or not; and that a usage to deliver goods without notice may be shown.(*g*)

Place of delivery.

The question when the ship has arrived at the place of

(*z*) *Cargo ex Argos*, L. R. 5 P. C. 134, 157; *supra* § 270.

(*a*) See *Aste* v. *Stumore*, 1 C. & E. 319 *supra*. A similar liberty was reserved to the shipowners in *Hick* v. *Rodocanachi*, (1891) 2 Q. B. 626, 632; see § 157 *supra*.

(*b*) *Gatliffe* v. *Bourne*, 4 B. N. C. 314; 3 M. & G. 643 (Ex. Ch.); 7 *ib.* 850 (H. L.); *Syeds* v. *Hay*, 4 T. R. 260.

(*c*) *Infra* § 328.

(*d*) *Marzetti* v. *Smith*, 49 L. T. 580, 583, per Brett, M.R.

(*e*) 1 Parsons, 222; *The Norway*, B. & L. at p. 401; *Hyde* v. *Trent Navigation Co.*, 5 T. R. 389, per Buller, J., at p. 397; see also per Lord Kenyon, C.J., and Grose, J., pp. 395, 400; *Bourne* v. *Gatliffe*, 3 M. & G. 643; 7 *ib.* 850.

(*f*) But he is not, in this country, obliged to assort goods belonging to one consignee, though such a course may be beneficial to the latter; *The Norway*, B. & L. 404.

(*g*) 1 Parsons, 223–227.

Demurrage.

discharge, so as to impose on the merchant the duty to take delivery, and the liability of the latter for demurrage or damages for delay in doing so, have already been discussed.(*h*)

Mode of delivery.

§ 325. The manner of delivering the goods, and consequently the period when the responsibility of the master and owners for their safe custody will cease, depends upon the custom prevailing at the place of delivery, unless inconsistent with the terms of the contract under which the delivery is made.(*i*) By the custom of the River Thames, as proved to exist at the end of the eighteenth century, if the consignee sent a lighter to fetch the goods, the master of the ship was obliged to watch them into the lighter and guard them until it was fully laden, but he was not bound to take care of the lighter after it was fully laden.(*k*)

In the Thames.

But it appears that, at the present day at any rate, this rule is subject to a qualification so far as regards steamships coming into the Victoria Docks in the port of London with a general cargo. The custom for such ships is to give notice of arrival to the consignees, and to discharge the goods on to the quay (which is done by the servants of the Dock Company); and if the consignee sends lighters, the goods are put into them from the quay, by the Dock Company's servants, but at the cost of the shipowner. Having regard to this custom, bills of lading are in use whereby the "ship's responsibility" is to cease on delivery "from the ship's deck," or "from the ship's tackles;" and the result is that the shipowner's and master's responsibility is at an end when the goods have been placed upon the quay, though this is not in fact a delivery to the consignee.(*l*)

Master's duty to make a complete delivery.

§ 326. The master and shipowners are bound to make to each consignee a complete delivery of his goods according to the bills of lading, and are liable to be sued for any deficiency, unless it can be shown that it arose from perils of the seas or some other excepted cause, or in the case of an action against an owner or master who has not signed the bill of lading, that the goods not delivered were never shipped.(*m*) It is no excuse for a short or mistaken delivery to one consignee that a part or the whole of his goods have been delivered by mistake to another.

Thus, in *Bradley* v. *Dunipace*,(*n*) 1676 bags of meal were shipped on board a ship, of which the defendant was master, some of the bags weighed twelve stone each and some eight stone each.

(*h*) §§ 158—161. As to how far the consignee is affected by the terms of a charter-party, see §§ 302—310 *supra*.

(*i*) *Petrocochino* v. *Bott*, L. R. 9 C. P. 355; *Marzetti* v. *Smith*, 49 L. T. 580; per Tindal, C.J., and Sir Montague Smith, *Gatliffe* v. *Bourne*, 4 B. N. C. 329; *Cargo ex Argos*, L. R. 5 P. C. at p. 160.

(*k*) *Catley* v. *Winteringham*, *Robinson* v. *Turpin*; 1 Peake, 202 (150), and note.

(*l*) *Petrocochino* v. *Bott*, L. R. 9 C. P. 355; *Marzetti* v. *Smith*, 49 L. T. 580.

(*m*) See 18 & 19 Vict. c. 111, s. 3.

(*n*) 7 H. & N. 200; 1 H. & C. 521.

They were all shipped, mixed together. They were all marked alike. The master knew nothing of their relative capacity, but he signed two bills of lading, one for 1209 bags and the other for 467 bags, delivered to order. The latter bill of lading was for 467 bags rye meal, gross 35 tons 9 cwt., and at the foot of the bill were the words "contents unknown and not responsible for weight." No means were taken to identify by marks in the bills of lading any particular bags, and there was nothing on the face of the bills of lading from which the master could see that they were intended for different consignees. When the ship arrived at her port of destination, the master by mistake delivered to the consignee, who was the indorsee of the bill of lading of the 467 bags of twelve stone each, several bags which weighed only eight stone each. It was held in the Exchequer Chamber, that the master was responsible for not delivering 467 bags of the proper weight.

Master's duty to make a complete delivery.

§ 327. Where there is a failure to deliver the goods arising from some cause (such as unseaworthiness) for which the shipowner and master are responsible, the measure of their liability is the market value which the goods would have had at the port of their destination at the time when they should have been delivered. If there is no market for such goods, the measure is the price of the goods at the place of manufacture, together with the cost of carriage, and a reasonable sum for profit. In either case, however, the amount of unpaid freight must be deducted.(*o*)

Measure of damages for non-delivery.

On the same principle, where the claim is for delivery in a damaged condition, the measure of liability is the difference between the value of the goods as delivered, and that of sound goods of the same class at the place and time of delivery. And where, in order to obtain delivery, the cargo-owners, or their underwriters, have had to pay salvage expenses incurred by reason of some cause for which the shipowner is liable, these can be recovered as damages for his breach of duty.(*p*) The amount of damages recoverable in an action on the contract of carriage is not affected by the fact that the non-delivery was occasioned by a collision for which both ships were to blame.(*q*)

For damaged delivery.

Expense of salving cargo.

If the master, for the purposes of the ship, under justifiable necessity, either hypothecate the whole, or sell a part of the cargo, its owner is entitled to be indemnified by the shipowners for any loss occasioned thereby,(*r*) and if the ship does not arrive, it has been

Where non-delivery occasioned by hypothecation or sale for repairs.

(*o*) *O'Hanlan* v. *G. W. R.*, 6 B. & S. 484; *Rice* v. *Baxendale*, 7 H. & N. 96; *Rodoconachi* v. *Milburn* 18 Q. B. D. 67: *Smith* v. *Tregarthen*, 56 L. J. Q. B. 437.

(*p*) *Scaramanga* v. *Martin*, 52 L. T. 764; 53 *ib.* 810.

(*q*) *The Bushire*, 52 L. T. 740: as to the rights of cargo-owners in an action of tort in such a case, see *infra* § 645 ("Collisions").

(*r*) *Benson* v. *Duncan*, 3 Ex. 644; 1 Ex. 537.

Measure of damages for non-delivery;

said that he is entitled in case of sale to the amount which the goods actually fetched;(s) but if the ship does arrive at her port of discharge, then the owner of the goods is entitled to recover, at his option, the price the goods fetched at their place of sale,(t) or their value at the time and place of delivery,(u) subject, it would seem, to a deduction for unpaid freight.(x) But against a claim for the price realised by the goods, the shipowner is not entitled to set off a claim for *pro ratâ* freight;(y) and on the contrary, the cargo-owner is entitled to set off such price against the freight of goods actually delivered, even though this may have been assigned for value to a third person.(z) Nor can the shipowner claim to treat the cost of the repairs (unless indeed it was itself occasioned by general average loss) as a general average expenditure, and to set off a proportion of such cost against the claim of the cargo-owner to the value of the goods sold.(a)

for delay in delivery.

In case of delay in delivery arising from some cause for which the shipowner is responsible, the consignee can recover for such damage only as "is the natural and reasonable result of the defendant's act." It has been held that loss arising from a fall in the market between the time when the goods ought to have been, and that when they were, delivered does not, in the case of sea-carriage, come within this description, and therefore that it cannot be recovered.(b)

§ 328. We have seen that if the goods are not claimed within the lay days and demurrage days, or within a reasonable time of the ship's arrival at her port of discharge, the master may land and warehouse them for the benefit of those concerned. The powers of shipowners and masters in this respect were enlarged and defined by the following sections of the Merchant Shipping Act, 1862:(c) —

67. Where the owner of any goods(d) imported in any ship from foreign parts into the United Kingdom fails(e) to make entry thereof,

(s) Per Brett, J., *Hopper* v. *Burness*, 1 C. P. D. at p. 141; but see Abbott, 13th ed. 434, and *Atkinson* v. *Stephens*, 7 Ex. 567.

(t) *Hopper* v. *Burness*, 1 C. P. D. 137: *Campbell* v. *Thompson*, 1 Stark. 490; *Richardson* v. *Nourse*, 3 B. & Ald. 237.

(u) *Hallett* v. *Wigram*, 9 C. B. 580; *Hopper* v. *Burness*, *ubi sup.*

(x) See *Rodoconachi* v. *Milburn*, 18 Q. B. D. 67, 77.

(y) *Hopper* v. *Burness*, *ubi sup.* and cases cited *supra* § 285.

(z) *Campbell* v. *Thompson*, 1 Stark, 490; the sale in this case seems not to have been justifiable, but the decision did not turn upon that.

(a) *Hallett* v. *Wigram*, 9 C. B. 580; see § 296 *sup.*

(b) *The Parana*, 2 P. D. 118; *The Notting Hill*, 9 *ib.* 105.

(c) 25 & 26 Vict. c. 63. The provisions of the Customs Act prescribing the duties of those who land goods will be found below, Chap. XVII.

(d) The word "shipowner" includes the "master," *ibid.* s. 66; the expression "owner of goods" includes every person "entitled for the time being to the possession" of them, though his right may be subject to a lien.

(e) The word "fails" does not imply wilful default; it is sufficient if the delivery of the goods to their "owner with-

or, having made entry thereof, to land the same or take delivery thereof, and to proceed therewith with all convenient speed by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following; (that is to say:)

Power to shipowner to enter and land goods in default of entry and landing by owner of goods.

(1) If a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the time so expressed:

(2) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, after the report of the ship:

(3) If any wharf or warehouse is named(*f*) in the charter-party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse:

(4) In other cases the shipowner, in landing goods by virtue of this enactment, shall place them in or on some wharf or warehouse on or in which goods of a like nature are usually placed; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Commissioners of Customs for the landing of dutiable goods:

(5) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed so to do,(*g*) and his entry shall in such case be preferred to any entry which may have been made by the shipowner:

(6) If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on such landing and assortment shall be borne by the shipowner.(*h*)

(7) If at any time before the goods are landed or unshipped(*e*) the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other

in the proper time has been prevented by the force of circumstances, whether the latter is or is not to blame," per Sir J. W. Colville, *The Energie*, L. R. 6 P. C. 306, 316.

(*f*) See per Dr. Lushington, *The Norway*, B. & L. at p. 400.

(*g*) Though part of the goods may have been already landed, *Wilson* v. *London, &c., Co.*, L. R. 1 C. P. 61.

(*h*) To entitle himself to notice under this condition, the owner of the goods must, at the time of his offer, be in a condition actually to take delivery thereof. *Berresford* v. *Montgomerie*, 17 C. B. N. S. 379. The notice in writing is not required in the case of goods landed under sub-s. (6). It is only necessary under sub-s. (7) to relieve the shipowner from landing the goods at his own risk and expense. They are not necessarily at his risk and expense after being landed. And if after receiving notice (verbal or written) that the goods have been landed, either under sub-s. (6) or (7), their owner does not take them away within a reasonable time, he will be liable for dock charges incurred after such notice. For this purpose, notice to a lighterman employed by the owner of the goods is notice to such owner. *The Clan Macdonald*, 8 P. D. 178.

than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours' notice(*h*) in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.(*i*)

If, when goods are landed, the shipowner give notice for that purpose, the lien for freight is to continue.

68. If at the time when any goods are landed from any ship, and placed in the custody of any person, as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned (*k*) in such notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof; and the wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fail so to do, make good to the shipowner any loss thereby occasioned to him.

Lien to be discharged on proof of payment.

69. Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner, the said lien shall be discharged.(*l*)

Lien to be discharged on deposit with warehouse owner.

70. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged, but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Warehouse owner may at the end of 15 days, if no notice be given, pay deposit to shipowner.

71. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or warehouse owner may, at the expiration of such fifteen days, pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Course to be taken if notice to retain is given.

72. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited, the sum, if any, admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to

(*i*) The provisions of this section may be overridden by the contract of carriage; see as to sub-s. 6 and 7, *Oliver* v. *Colven*, 27 W. R. 822; *Borrowman* v. *Wilson*, 7 T. L. R. 416.

(*k*) Where the amount mentioned is "manifestly and grossly in excess of that for which the master can *bonâ fide* claim a lien," this will be tantamount to a wrongful detention of the goods, and will constitute a cause of action against the master and his owners; *The Energie*, L. R. 6 P. C. 306, 317.

(*l*) As to the preservation of liens on goods warehoused otherwise than under this Act, see § 313 *sup.*

be payable, the whole of the sum deposited, for thirty days from the date of the said notice; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum or otherwise for the settlement of any disputes which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After 90 days warehouse owner may sell goods by public auction.

73. If the lien is not discharged, and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and, if required by the shipowner, shall at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

Notices of sale to be given.

74. Before making such sale the wharf or warehouse owner shall give notice thereof by advertisement in two newspapers circulating in the neighbourhood, or in one daily newspaper published in London and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give notice of the sale to the owner of the goods by letter sent by the post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Monies arising from sale, how to be applied.

75. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the monies received from the sale as follows, and in the following order:

1. If the goods are sold for home use in payment of any customs or excise duties owing in respect thereof:
2. In payment of the expenses of the sale:
3. In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods:
4. In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods:
5. But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement; and the surplus, if any, shall be paid to the owner of the goods.

Warehouse owner's rent and expenses.

76. Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this Act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said goods, and shall have a lien on the said goods for the said rent and expenses.

77. Nothing in this Act contained shall compel any wharf or ware-

Warehouse owner's protection.

house owner to take charge of any goods which he would not be liable to take charge of if this Act had not passed; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Act.

Saving powers under Local Acts.

78. Nothing in this Act contained shall take away or abridge any powers given by any local Act to any harbour trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor shall anything in this Act contained take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local Act.

CHAPTER VI.

BILLS OF LADING.

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What a Bill of Lading is and its Form.

What it is.

By whom signed.

§ 329. THE bill of lading is a very ancient document. It is in general use among all commercial nations, and is much the same in its form and provisions in various countries.(*a*) It is generally signed by the master, but in some ports it is not unusual for the bill of lading to be signed and delivered by a clerk in the office of the owners or agents of the said ship.(*b*) It has no force until it is delivered, although it has been signed.(*c*) When signed by the master it is an acknowledgment under his hand that he has received the goods described in it, and that he undertakes to deliver them at the port, to the person or persons indicated, and upon the terms named therein.(*d*) And in such a case, unless the shipper is also charterer of the ship (in which case the contract is to be found in the charter-party), it is the evidence of the contract entered into by the master and owners with the shipper respecting the carriage of the goods mentioned therein.(*e*)

(*a*) 1 Parsons on Shipping, 184.

(*b*) 1 Parsons, 185; *Stumore* v. *Breen*, 12 Ap. Ca. at p. 702; *Jessel* v. *Bath*, L. R. 2 Ex. 267.

(*c*) 1 Parsons, 187.

(*d*) See per Buller, J., *Caldwell* v. *Ball*, 1 T. R. 205, 215.

(*e*) In the case of a ship put up by charterers as a general ship, it may be evidence of a contract between them and

Form and contents.

The following is an example of a bill of lading in a simple form:—

Shipped (*f*) in good order and well-conditioned by (*name of merchant*), in and upon the good ship (*g*) called (*name of ship*), whereof (*name of master*) is master for this present voyage, and now riding at anchor in the (*name of port*), and bound to (*name of place of destination*), (*description of cargo*), being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid port (*name of place of destination*), (the act of God, the Queen's Enemies, Fire and all and every other Dangers and Accidents of the Seas, Rivers, and Navigation of whatever nature and kind soever excepted), unto (*name of consignee*) or to his Assigns, he or they paying Freight for the said Goods at the rate of , with primage and average accustomed. In witness whereof the Master or Purser of the said Ship hath affirmed to (*number of parts of bill*) Bills of Lading, all of this tenor and date, one of which (*number of parts*) Bills being accomplished, the others to stand void.

Dated at the day of 189 .

Upon the foregoing form numerous modifications and variations have been engrafted to suit the needs of modern commerce.(*h*) The tendency of these is almost uniformly in the direction of relieving the shipowner from liability for failure to deliver the cargo in accordance with his undertaking; for example by giving a wide liberty of deviation,(*i*) and by enlarging the list of excepted perils.(*k*) A clause providing for payment of general average according to York-Antwerp rules is also commonly inserted.(*kk*)

To whom consigned. "Assigns."

The bill of lading usually contains the word "assigns." Sometimes it is drawn making the goods deliverable to consignor by name, or assigns; sometimes to order or assigns, without naming any person; sometimes by name to the person who is to receive the goods at the port of destination, or assigns; and occasionally to a named consignee without mention of assigns. Sometimes no person is named as consignee, but the terms of the bill of lading are, "To be delivered, &c., unto order, or assigns," which words and blanks are generally understood

the shipper; see § 356 *infra*. But where the bill of lading purported to incorporate terms of a charter-party, in respect of which the parties were not *ad idem*, it was held to be no evidence of any contract at all; *Smidt* v. *Tiden*, L. R. 9 Q. B. 446.

(*f*) Timber floated alongside is not "shipped"; *Thorman* v. *Burt*, 1 C. & E. 596; affd. 54 L. T. 349; though it may be "received" into the custody of the master; *Pyman* v. *Burt*, 1 C. & E. 207. (See, however, as to this case, *Lishman* v. *Christie*, 19 Q. B. D. 333.)

(*g*) Description as "steamship," involves duty to use steam as the chief motive power; *Fraser* v. *Telegraph, &c., Co.*, L. R. 7 Q. B. 566.

(*h*) Some of the principal modern forms of bill of lading are set out by Mr. Carver (Carriage by Sea) in his Appendix A.

(*i*) See § 177 *supra*.

(*k*) *Infra* §§ 357–369.

(*kk*) See *The Brigella*, 9 T. L. R. 399.

to import an engagement on the part of the master to deliver the goods to the person to whom the shipper or consignor shall order the delivery, or to the assignee of such person.(*l*)

Stamp.

A bill of lading of or for any goods, merchandise, or effects to be exported, or carried coastwise, is chargeable with a stamp duty of sixpence,(*m*) and cannot be stamped after the execution thereof. The penalty for making or executing any bill of lading not duly stamped is £50.(*n*)

Copies, and what done with them.

Several, generally three, copies of the bill of lading are usually made out and signed by the master. One or more of these copies or parts of the bill is usually sent by the shipper of the goods, by post or otherwise, to the persom for whom the goods are intended. One is sometimes sent by the shipper to his agent, one is sometimes retained by the shipper himself, and one is kept by the master for his own future guidance.

The Master's Authority in giving Bills of Lading.

"Mate's receipt."

§ 330. When goods are delivered on board a ship, it is usual for the mate or person in charge at the time to give a receipt to the person so delivering, and it is his duty to do so if required.(*o*) This is known as the "mate's receipt." The shipper afterwards usually hands it to the master or other agent of the shipowner authorised to give bills of lading,(*p*) before the ship leaves, receiving in exchange from him two, three, or more parts of a bill of lading of the goods, signed by such master or agent. And a bill of lading should in all cases be given, if required, in exchange for mate's receipts, before the ship sails; for if, contrary to the express wishes of the shipper, the master sails away with the goods without having given a bill of lading, both he and the owners may be liable for conversion.(*q*)

Right of shipper to bill of lading in exchange.

Bill given in exchange for receipt.

But where a receipt has been given for goods put on board a ship, the master ought, as a general rule, to be careful not to give any bill of lading without receiving the receipt in exchange, "for otherwise he may place himself under a twofold responsibility —a responsibility to the shipper, in case he shall require the goods to be delivered to his own order, and have a legal right to do so;

(*l*) Abbott, 13th ed. 363.

(*m*) 54 & 55 Vict. c. 39, s. 1.

(*n*) *Ibid.*, s. 40.

(*o*) *Ruck* v. *Hatfield*, 5 B. & Ald. 632. A shipowner (or master) to whom goods are delivered upon the terms "no goods to be received on board unless a clean receipt can be given," and who loads the goods and afterwards refuses either to give a clean receipt, or to redeliver them, is guilty of a conversion. *Armstrong* v. *Allan*, 67 L. T. 417, 738; per Lord Esher, M.R. The grounds on which the decision was reversed do not affect the principle. See § 318 *supra*.

(*p*) An overstatement in a mate's receipt of the quantity of goods received does not entitle the shipper to damages from the shipowner, even where no bills of lading are given, and he has paid his vendor upon the faith of the mate's receipt. *Biddulph* v. *Bingham*, 30 L. T. 30.

(*q*) *Falk* v. *Fletcher*, 18 C. B. N. S. 403; *Schuster* v. *McKellar*, 7 E. & B. 721; *Peek* v. *Larsen*, L. R. 12 Eq. 378; *Jones* v. *Hough*, 5 Ex. D. 115, 120.

and a responsibility to a holder of the bill of lading, who may be induced to purchase the goods on the faith of it."(*r*) But it has been held that a master may properly sign bills of lading in favour of the shipper, without production of the mate's receipts, if he is satisfied that the goods are on board and has no notice that anyone but the shipper claims an interest in them.(*s*)

If no receipt is given, the master must take care not to deliver a bill of lading to any person but the shipper, without his orders, for if he does he may incur a twofold responsibility, in the same way as if a receipt had been given.(*t*)

In what form.

§ 331. Where the ship is chartered, and the charter-party specifies the form of bill of lading to be given, that form should be adopted; but in such a case notice of the terms of the charter-party should be given to shippers before their goods are on board; for a shipper without notice of a charter-party cannot be required to accept a bill of lading in accordance with the terms of the charter-party, if such a bill contains stipulations (as to lien or otherwise) of an objectionable character; and if a bill of lading without such stipulations is refused, he is entitled to a return of his goods free from any claim by the shipowners.(*u*) From these propositions it seems to follow that, where there is no charter-party, or no stipulation as to the terms of bill of lading to be used, a shipper would be entitled to a return of his goods if the master refused to give a bill of lading without inserting in it terms more onerous than those usually found in bills of lading of similar goods.(*x*) And it has been decided that, where the charter-party provides that the master is to sign bills of lading "as presented," it is a breach of the contract, entitling the charterer at least to nominal damages, if he refuses to sign the bills of lading presented without the insertion of additional matter.(*y*)

Master's duty to see that bill of lading is accurate.

No authority to sign for goods not on board.

§ 332. It is the duty of the master before signing bills of lading to satisfy himself of the correctness of the facts appearing on them. If, in consequence of failure to do so, his owners sustain loss, he will be liable to them for the amount of it in an action for his breach of duty.(*z*) He has no authority to sign a bill of lading for goods which he has not received on board, or for more than have actually been shipped, and if he does so, the shipowners

(*r*) Abbott, 13th ed. 358; *Craven* v. *Ryder*, 6 Taunt. 433; *Thompson* v. *Trail*, 2 C. & P. 334; 6 B. & C. 36; *Schuster* v. *McKellar*, 7 El. & Bl. 721.

(*s*) *Hathesing* v. *Laing; Laing* v. *Zeden*, L. R. 17 Eq. 92.

(*t*) Abbott, 13th ed. 359; *Ruck* v. *Hatfield*, 5 B. & Al. 632.

(*u*) *Peek* v. *Larsen*, L.R, 12 Eq. 378. Cp. *Tharsis, &c., Co.* v. *Culliford*, 22 W. R. 46, to same effect, where goods were shipped on the terms of a sub-charter, and the master insisted on a bill of lading under the terms of the original charter-party.

(*x*) See Carver, § 58.

(*y*) *Jones* v. *Hough*, 5 Ex. D. 115. Cp. *Armstrong* v. *Allan*, note (*o*) *supra*. As to the meaning of a stipulation for "clean bills of lading," see § 338 *infra*.

(*z*) *Stumore* v. *Breen*, 12 Ap. Ca. 698 (master held liable for an error in the dates of shipment). As to his liability to consignees and indorsees, see §§ 350–354 *infra*.

are not bound by it, at all events unless the goods described have subsequently been shipped,(*a*) even to a holder who has taken it for valuable consideration, and without notice of the fact.(*b*) But, although it is generally wrong to sign bills of lading before the goods are on board, and until they are on board the bills are not binding on the shipowner, yet, if the consignor does afterwards put goods on board in fulfilment of his contract, without a new destination, the bill of lading attaches just as if they had been on board at the time it was signed.(*c*) It would be otherwise, it seems, if the destination were altered.(*d*)

Nor to sign more than one set of bills for the same goods.

When the master has signed one set of bills of lading for goods which he has received on board, he has no authority to sign another set for the same goods, except upon delivery up of the former set, or upon the offer of a sufficient indemnity. If he do sign a second set of bills, without the first set having been given up, and then deliver the goods to the holder of the second set, the holder of the first set, which are the genuine and valid bills, may recover the value of the goods from the shipowners.(*e*)

Nor to deprive owner of agreed freight.

§ 333. If the master has received goods on board at a foreign port at an agreed rate of freight, and signed bills of lading for them at that rate, he has no authority to substitute for such bills others at a less rate.(*f*) Nor has he power, under his general authority, to sign bills of lading making the freight payable to persons other than his owner,(*g*) or engaging to carry the goods free of freight.(*h*) And, speaking generally, where a rate of freight has been agreed, whether by charter-party or otherwise, between the shipper and the shipowner, the master has no authority as against the shipper, unless it is expressly given by the contract, to sign bills of lading at a lower rate.(*i*)

When master may give bills at less than agreed freight.

But where the charter-party directs that the master is "to sign bills of lading at any rate of freight without prejudice to the charter," he is not only entitled but bound to do so. And apart from such a direction, if he is, in performance of a charter-party, at a foreign port of loading, where he cannot immediately communicate with his owners, and the charterers' agents, in consequence of their principals' insolvency, refuse to ship, or to continue shipping, under the charter-party, the master has

(*a*) See per Willes, J., *Gattorno* v. *Adams*, 12 C. B. N. S. 567.

(*b*) *Grant* v. *Norway*, 10 C. B. 665; *Hubbersty* v. *Ward*, 8 Ex. 330; *Thorman* v. *Burt*, 54 L. T. 349.

(*c*) Per Willes, J., *Gattorno* v. *Adams*, 12 C. B. N. S. pp. 567, 568; and see per Parke, B., *Bryans* v. *Nix*, 4 M. & W. at p. 793.

(*d*) *Bryans* v. *Nix*, 4 M. & W. 775.

(*e*) *Hubbersty* v. *Ward*, 8 Ex. 330.

(*f*) *Pearson* v. *Göschen*, 17 C. B. N. S. 352.

(*g*) *Reynolds* v. *Jex*, 7 B. & S. 86.

(*h*) Per Jervis, C.J., *Grant* v. *Norway*, 10 C. B. 687, cited with approval, per Blackburn, J., in *Reynolds* v. *Jex*, *ubi sup.*

(*i*) *Pickernall* v. *Jauberry*, 3 F. & F. 217; *Hyde* v. *Willis*, 3 Camp. 202; *Pearson* v. *Göschen*, 17 C. B. N. S. 352; as to the rights of third persons, see *supra* §§ 302, 307.

authority to make, either with a third party or with the charterers' agents, such a bargain as, acting for the benefit of his owners, he thinks proper and prudent under the circumstances; and if this involves giving bills of lading at a rate of freight less than the chartered rate, he may, as to all goods shipped after such refusal, bind his owners by doing so.(*k*)

The Effect of the Bill of Lading as evidence of Shipment.

Against master and shipowner.

§ 334. A bill of lading signed by the master is evidence against himself and the owner of the ship, both of the receipt of the goods described in it and also of any material fact stated in the bill of lading respecting the date of shipment,(*l*) the quantity, the quality, the condition, or any other element in the description of the goods.(*m*)

The master should therefore be most careful, as well for his own protection as for that of his employer, not to sign a bill of lading until the goods are actually delivered to him, and not to permit the insertion of statements which are incorrect, or likely to mislead, or give rise to misunderstanding, for by so doing he may render himself liable to the shippers or consignees of the goods.(*n*)

Against shipowner how far conclusive.

Between the shipowner and shipper a bill of lading signed by the master is *primâ facie* evidence only of the facts stated in it. It may be corrected or contradicted by external evidence,(*o*) but the burthen of proving that it is not correct lies upon the shipowner.(*p*) And even as between shipowner and consignee,(*q*) or assignee for value of the bill of lading,(*r*) the same rule applies, subject to this: that statements in the bill of lading affecting the conditions on which the goods are deliverable—*e.g.* a statement that freight has been paid at the port of loading—are in general, as between an assignee for value without notice of the facts and the shipowner, conclusive against the latter.(*s*) And by agreement the bill of lading may be, and in the timber trade frequently is, made "conclusive evidence against the owners of the quantity received."(*t*)

(*k*) *Pearson* v. *Göschen*, 17 C. B. N. S. 352, 376.

(*l*) *Stumore* v. *Breen*, 12 Ap. Ca. 698.

(*m*) Parsons on Shipping, 197.

(*n*) *Bradley* v. *Dunipace*, 7 H. & N. 200; 1 H. & C. 521; see 18 & 19 Vict. c. 111, s. 3, and § 335 *inf.*

(*o*) *Bates* v. *Todd*, 1 Moo. & R. 106; *Berkeley* v. *Watling*, 7 A. & E. 29; *McLean* v. *Fleming*, L. R. 2 H. L. (Sc.) 128.

(*p*) *The Peter der Grosse*, 1 P. D. 414.

(*q*) *Brown* v. *Powell, &c., Co.* L. R. 10 C. P. 562.

(*r*) Per Littledale, J., *Berkeley* v. *Watling*, 7 A. & E. 39; *Grant* v. *Norway*, 10 C. B 665; *Jessel* v. *Bath*, L. R. 2 Ex. 267; *Thorman* v. *Burt*, 54 L. T. 349 (affg. 1 C. & E. 596); *Cox* v. *Bruce*, 18 Q. B. D. 147.

(*s*) *Howard* v. *Tucker*, 1 B. & Ad. 712; and see §§ 302–307, and cases cited *supra*.

(*t*) *Lishman* v. *Christie*, 19 Q. B. D. 333; distinguishing *Pyman* v. *Burt*, 1 C. & E. 207.

§ 335. To the master or other person who actually signs the bill of lading the consequences of mis-statement therein are much more serious, for it is not, generally speaking, open to him to prove as against a consignee or indorsee for value that goods mentioned in the bill of lading were not actually shipped.

Against master.

This is the effect of the Bills of Lading Act, 1855,(*u*) s. 3 of which provides that "every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel, shall be conclusive (*x*) evidence of such shipment, as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice, at the time of receiving the same, that the goods had not been in fact laden on board: Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims."(*y*)

Bill of lading in hands of consignee, &c. conclusive evidence of the shipment as against master, &c.

The meaning of the expression "persons signing the same" has been the subject of some discussion. It seems that these words do not necessarily exclude from the operation of the statute a person who signs by the hand of another, such as a clerk signing *per pro.*, or a servant, but that the signature of such an agent as the master or consignee of a ship is not sufficient to bring his principal within it.(*z*)

Although in some cases, and for some purposes where the weight of the cargo is material, the master may be bound by the statement of weight in the bill of lading—for example, in an action against him for non-delivery (*a*)—he is not precluded in an action for a lump sum freight from proving that he delivered all the goods that he received on board, and that the weight actually received differed from that acknowledged by the bill of lading.(*b*)

How far master bound by statement of weight in bill of lading.

§ 336. It has been said that the acknowledgment in the bill of lading as to condition can only mean that, so far as there was "opportunity of judging, the goods were sent in a perfectly good condition."(*c*) But in view of the important effect of statements in the bill of lading, it is a common practice, where goods are shipped in a closed case, to qualify the absolute language of the

Acknowledgment as to "condition."

(*u*) 18 & 19 Vict. c. 111.

(*x*) *Smith* v. *Tregarthen*, 56 L. J. Q. B. 437.

(*y*) As to what evidence will bring the master within this proviso, see *Valieri* v. *Boyland*, L. R. 1 C. P. 382.

(*z*) *Thorman* v. *Burt*, 54 L. T. 349; *Jessel* v. *Bath*, L. R. 2 Ex. 267; and see *Mayer* v. *Dresser*, 16 C. B. N. S. 646, and cases cited *sup.* § 334.

(*a*) See *The Emilien Marie*, 44 L. J., Ad. 9.

(*b*) *Blanchet* v. *Powell's, &c.*, L. R. 9 Ex. 74, 77.

(*c*) Per Sir J. Napier, *The Freedom*, L. R. 3 P. C. 600, quoting from *Clark* v. *Barnwell*, 12 How. 272 (Amer).

bill by some such phrase as "weight, value, and contents unknown." In such a case, a mis-statement innocently made by the shipper as to any of these matters would not avoid the contract, which is, on the part of the master, to carry the package whatever it may contain, and he will be liable if a portion of the contents, while in his custody as carrier, are lost, although there is some doubt whether he is responsible for their full value, where this is higher than it was represented to be.(*d*)

Effect of memorandum "weight, contents, and value unknown."

The effect of this memorandum is, as regards weight, to control the statement in the body of the bill so that it no longer amounts to an admission.(*e*) As regards the condition of the goods when received on board, the acknowledgment of the master in such a case, "extends only to the external condition of the package." But it does extend so far, and therefore where bales of feathers, when discharged, were found to be damaged both externally and internally, it was held that, notwithstanding the memorandum, the consignees need not, in order to establish their case, there being no evidence that the goods were in bad condition when shipped, prove how or when they became damaged.(*f*)

"Quantity and quality unknown."

§ 337. A similar memorandum, applicable to the case of goods shipped in bulk, "quantity and quality unknown," is usual in the grain-carrying trade. The effect of this is to deprive the acknowledgment in the bill of lading of all force as an admission, both as regards quantity and condition (which seems to be included in the term "quality") at the time of shipment.(*g*)

Memorandum does not strike out invoice quantity from bill of lading.

The object of such memorandum is merely to protect the master against any mistake that might occur in the invoice quantity in the bill of lading, in case of alleged short delivery, or deterioration not caused by his default. But the effect of the memorandum is not to strike out the invoice quantity from the bill of lading.(*h*) It may still be operative for the purpose, for example, of calculating the freight. Therefore, where by charter-party, in the event of the cargo or any part thereof being damaged or heated, freight was to be payable upon the invoice quantity taken on board as per the bill of lading, and the master signed a bill of lading for 2368 quarters of grain with the words "*quantity and quality unknown*," written at the foot, part of the cargo having been damaged by heating, it was held, that the master was entitled to be paid freight, as he claimed, on the *invoice quantity* taken on board, notwithstanding the words written at the foot of the bill.(*i*)

(*d*) *Lebeau* v. *Gen. Steam, &c.*, L. R. 8 C. P. 88.

(*e*) *Jessel* v. *Bath*, L. R. 2 Ex. 267; see, however, *The Emilien Marie*, 44 L.J., Ad. 9.

(*f*) *The Peter der Grosse*, 1 P. D. 414.

(*g*) *The Ida*, 32 L. T. 541; *The Prosperino Palasso*, 29 *ib.* 62.

(*h*) *Tully* v. *Terry*, L. R. 8 C. P. 679; *Covas* v. *Bingham*, 2 E. & B. 836.

(*i*) *Tully* v. *Terry*, L. R. 8 C. P. 679; and see per Martin, B., in *Jessel* v. *Bath*, L. R. 2 Ex. 273.

Qualifying words inconsistent with "clean bill of lading."

§ 338. It must be remembered that the insertion of qualifying words in the margin prevents the document being a "clean bill of lading." "A clean bill of lading is a bill of lading which contains nothing in the margin qualifying the words in the bill of lading itself."(*k*) Where therefore the master is by charter-party or otherwise bound to sign "clean bills of lading as presented," it is a breach of the contract, giving rise to an action for damages, to insert any qualifying words in the margin of the bill of lading.(*l*) And where the contract between the merchant and the shipowner contained a term, "no goods to be received on board unless a clean receipt can be given," and the master having received goods on board, refused to give a "clean receipt," or to re-deliver the goods, his conduct was held to amount to a conversion.(*m*) In such a case as the last, if the state of the goods is such as not to warrant the giving a clean receipt (or bill of lading as the case may be) the only safe course for a master to pursue would seem to be to refuse to take the goods.(*n*)

Transfer of the Bill of Lading.

Transfer of bill.

§ 339. The bill of lading, as we have seen,(*o*) is the symbol of the goods so long as they are at sea and until delivery has been made. Accordingly, from the earliest times, a bill of lading, drawn in the usual form and making the goods deliverable to "order or assigns," might be legally transferred by one *bonâ fide* holder to another; although, as it seems, a bill of lading in which the words "order or assigns" have not been inserted is in no sense a negotiable instrument.(*p*) But before the Bills of Lading Act, 1855,(*q*) the transfer of a bill of lading did not confer on the transferee any right to sue upon it. For although the property in the goods might, and the transferor's right to delivery of them did, pass by the transfer, the contract contained in the bill of lading did not.(*r*)

How to be made.

If the bill of lading makes the goods deliverable "to ——" or "to bearer," then it is transferable by delivery without indorsement;(*s*) if to the consignor "or order or assigns," or merely "unto order or assigns," then before it can be transferred the

(*k*) Per Cave, J., *Restitution S.S. Co.* v. *Pirie*, 61 L.T., at p. 333 (affd. 64 L.T. 491, n.); Maude and Poll. 4th ed. 341.

(*l*) See *Jones* v. *Hough*, 5 Ex. D. 115.

(*m*) *Armstrong* v. *Allan*, 67 L. T. 417; revd. p. 738, but without affecting the principle; and see *supra*, § 330, notes (*o*), (*q*).

(*n*) Per Wills, J., 67 L. T. at p. 419.

(*o*) *Supra* § 319.

(*p*) *Henderson* v. *Comptoir, &c.*, L. R. 5 P. C. 253; *Lickbarrow* v. *Mason*, 1 S. L. C. 9th ed. at p. 748, per Ashurst, J.

(*q*) 18 & 19 Vict. c. 111.

(*r*) 1 S. L. C. 9th ed. 813; *Thompson* v. *Dominy*, 14 M. & W. 403; *Howard* v. *Shepherd*, 9 C. B. 297; *Sargent* v. *Morris*, 3 B. & A. 277.

(*s*) Scrutton on Charter-parties, &c., 124, 125. But indorsement would be necessary to enable the transferee to sue under 18 & 19 Vict. c. 111.

consignor must indorse the bill of lading;(*t*) if to a named consignee "or order or assigns," the consignor may still by indorsement change the direction of the goods before the delivery of them or of the bill of lading to the party named in it, in which case the master must comply with that indorsement;(*u*) but, in the absence of such indorsement, the consignee must indorse before the bill can be transferred. It must be remembered that no transfer by indorsement is complete without delivery of the bill of lading to the indorsee.(*x*)

Indorsement in blank.

Indorsement may be either in blank or in full. An indorsement in blank is made by the indorser merely signing his name upon the bill. He who delivers a bill of lading indorsed in blank to another, not only puts it in the power of the person to whom it is delivered, and enables him to pass it from hand to hand by mere delivery, but gives him authority to fill it up as he pleases, so that the same effect is produced as if it were filled up with an order to deliver to that person.(*y*)

In full.

An indorsement in full expresses in whose favour it is made, thus—"Deliver to C. D. or order, A. B."; the signature of the indorser being subscribed to the direction. The effect is to make the goods deliverable to C. D. or his order only; and therefore in such a case C. D. cannot transfer the bill of lading otherwise than by indorsement.

How long bill of lading continues in force.

§ 340. The bill of lading continues to represent the goods until there has been complete delivery, or something equivalent to it, to the person entitled to receive them. Until such time, therefore, the bill of lading may be transferred as effectively as while the goods are at sea: for example, when they have been landed, and are lying at a sufferance wharf under a stop for freight.(*z*) After such delivery the bill of lading is *functus officio*.(*a*)

(*t*) See per Burrough, J., *Akerman* v. *Humphery*, 1 C. & P. at p. 57; *Nix* v. *Olive*; Abbott, 13th ed. 707. It is a frequent practice for a shipper, who is also a vendor of the goods, to take a bill of lading making them deliverable to his own order, and by retaining it in his own or his agent's hands, to reserve a right of disposing of the goods in case the purchaser makes default in payment of the price; see *Ogg* v. *Shuter*, L. R. 10 C. P. 159; 1 C. P. D. 47; *Shepherd* v. *Harrison*, L. R. 5 H. L. 116.

(*u*) *Mitchell* v. *Ede*, 11 A. & E. 888.

(*x*) See 11 A. & E. at p. 903.

(*y*) See the special verdict in *Lickbarrow* v. *Mason*, 1 S. L. C. 9th ed. 772, and per Buller, J., at p. 773. It seems, however, that an indorsement in full may be better evidence of an intention to pass the property; see per Lord Selborne, C., *Sewell* v. *Burdick*, 10 Ap. Ca. at p. 83.

(*z*) *Barber* v. *Meyerstein*, L. R. 4 H. L. 317; affg. *Meyerstein* v. *Barber*, L. R. 2 C. P. 38, 661; *Glyn* v. *E. & W. India Dock Co.*, 6 Q. B. D. 475; 7 Ap. Ca. 591; and cases cited § 353 *infra*.

(*a*) *Henderson* v. *Comptoir d'Escompte*, L. R. 5 P. C. 253, 261.

Effect of the Transfer of the Bill of Lading upon the Property in the Goods.

Title is in first transferee for value.

§ 341. The first person who, for value, gets the transfer of a bill of lading, though it be only one of a set of three bills, acquires the title to the possession of the goods; and all subsequent dealings with the other two bills must be subordinate to that first one, and for this reason—because the title is in the person who first gets a transfer of the bill of lading.(*b*) Therefore the effect of indorsement and delivery of a bill of lading drawn to order is to put the indorsee in the same position—so far, at least, as concerns the *primâ facie* right to require delivery of the goods—as that of a consignee named in the bill of lading.(*c*) Either of them, as we have seen, is entitled, on presenting a bill of lading, to call for a delivery of the goods;(*d*) and the master is justified in delivering to the first person who presents a bill of lading with an apparently regular title to it, unless he has notice or knowledge of an adverse claim to the goods.(*e*)

Effect of indorsement of bill drawn to order.

Transfer of unindorsed bill drawn to order confers no title.

§ 342. But if the bill of lading is drawn to order, and is transferred or forwarded without indorsement, the person receiving it acquires no right under it, but only has notice by it that the goods are shipped in the vessel and for the port named in the bill. And although, by virtue of the contract between himself and the shipper, the property in the goods may have passed to such person on shipment,(*f*) the master would not be justified in delivering on presentation of the unindorsed bill.(*g*)

Effect of transfer when transferor not authorised holder.

To *bonâ fide* indorsee.

§ 343. A bill of lading is not negotiable in the same sense as a bill of exchange.(*h*) The mere honest possession of it is not such a title to the goods as the like possession of a bill of exchange would be to the money promised to be paid by the acceptor. If, for example, the indorser is not the authorised and *bonâ fide* holder, his indorsement, unless he is an agent entrusted with the bill of lading within the meaning of the Factor's Act,(*i*) confers no title upon the indorsee. And upon the intervention of the true owner the latter is entitled to receive the goods from

(*b*) Per Lord Westbury, *Barber* v. *Meyerstein*, L. R. 4 H. L. 336. The learned lord used the expression "property"; the words title to the possession have been substituted in the text in view of the case of *Sewell* v. *Burdick*, 10 Ap. Ca. 74. See also *Caldwell* v. *Ball*, 1 T. R. 205.

(*c*) 1 Parsons, Sh. 196; *Haille* v. *Smith*, 1 B. & P. 563.

(*d*) *Supra* § 319; *Glyn* v. *E. & W. India Dock Co.*, *ubi sup.*

(*e*) *Supra* § 320; *Glyn* v. *E. & W. India Dock Co.*, *ubi sup.*

(*f*) *Coxe* v. *Harden*, 4 East, 211; see also *Van Casteel* v. *Booker*, 2 Ex. 691; *Mirabita* v. *Imperial, &c., Bank*, 3 Ex. D. 164; and Carver, §§ 492 *et seq.*, where the cases are collected and the subject is discussed.

(*g*) *Brandt* v. *Bowlby*, 2 B. & Ad. 932; *Nix* v. *Olive*, Abbott, Sh. 13th ed. 707; see also *Ogg* v. *Shuter*, L. R. 10 C. P. 159; 1 C. P. D. 47; *Shepherd* v. *Harrison*, L. R. 5 H. L. 116.

(*h*) 1 Smith's L. C. 9th ed. 814; *Gurney* v. *Behrend*, 3 E. & B. 622.

(*i*) 52 & 53 Vict. c. 45, *infra* § 347.

the shipowner, who is thereupon relieved from delivering them according to the bill of lading.(*k*) And so, "although the shipper may have indorsed in blank a bill of lading deliverable to his assigns, his right is not affected by an appropriation of it without his authority. If it be stolen from him, or transferred without his authority, a subsequent *bonâ fide* transferee for value cannot make title under it against the shipper of the goods."(*l*) Again, if bills of lading have been fraudulently obtained from the master, in order to deprive the shippers of the goods of their security for the price, and have been fraudulently indorsed for value to a *bonâ fide* indorsee, the property in the goods is not thereby transferred to him, but remains in the original owners.(*m*)

When bill assignable on performance of condition.

§ 344. The assignee for value of a bill of lading is entitled, as we have seen, to have the goods delivered to him upon the terms thereof; and, generally speaking, incurs no liability other than the payment of freight at the rate named therein.(*n*) Nor is his position in this respect altered by the fact that the rate of freight is nominal, or *nil*, the goods being carried on owner's account, even though the ownership of the ship may have changed since the bills of lading were given.(*o*) If, however, the bill of lading, either by the terms expressed on its face or by those of the indorsement makes the goods deliverable on the performance of some other condition, no party to whom the bill is afterwards transferred, can gain any title to the goods under such transfer, unless the condition is complied with and satisfied.(*p*) And the Bills of Lading Act, 1855,(*q*) seems to have made no alteration in these respects. In *Mitchel* v. *Ede*,(*r*) for example, a bill of lading was indorsed to A., with a condition that the goods were to be delivered to A. only on his giving security for certain payments, and otherwise to B. On the refusal of A. to comply with the condition, the bill was indorsed and delivered to B. It was held, that the property in the goods passed to B. by the special indorsement and by the delivery of the bill of lading to him.

Transfer conditional on acceptance of draft.

Where a bill of lading is sent to a vendee of goods together with a bill of exchange for the value of the goods for his acceptance, it is an implied condition of the transfer that he shall accept the bill of exchange, and if he fail to do so, his retention

(*k*) *Finlay* v. *Liverpool, &c. Co.*, 23 L. T. 251.

(*l*) Per Lord Campbell, *Gurney* v. *Behrend*, 3 E. & B. 634; disting. *Pease* v. *Gloahec*, L. R. 1 P. C. 219.

(*m*) *Schuster* v. *McKellar*, 7 E. & B. 704.

(*n*) *Supra* §§ 302 *et seq.*, 319.

(*o*) *Keith* v. *Burrows*, 2 C. P. D. 163; 2 Ap. Ca. 636; *Mercantile Bank* v. *Gladstone*, L. R. 3 Ex. 233.

(*p*) *Barrow* v. *Coles*, 3 Camp. 92; *Jesson* v. *Solly*, 4 Taunt. 52, and see other cases as to liability of holder for demurrage stipulated in the bill, *supra* § 156.

(*q*) 18 & 19 Vict. c. 111; 1 S. L. C. 9th ed. 814.

(*r*) 11 A. & E. 888.

of the bill of lading gives him no right to deal with it, and no title to the goods to which it relates.(*s*)

Assignee not in general bound by conditions of charter-party.

§ 345. If it is desired to include in the bill of lading any of the conditions of the charter-party, words which plainly express such an intention must be inserted in the bill of lading. The expression "he or they paying for the goods as per charter-party," the word "freight" having been struck through with a pen, was held to be insufficient to render the consignee liable for demurrage stipulated in the charter-party.(*t*) The same result was arrived at where the bill of lading contained in the margin the words "there are eight working days for unloading in London"; in addition to the words "paying freight as per charter-party" contained in the body of the bill.(*u*)

Freight and all other conditions as per charter-party.

The phrase commonly inserted in bills of lading for the purpose of rendering transferees liable to perform the conditions of the charter-party is "he or they paying freight for the said goods and all other conditions as per charter-party." The effect of such a clause is, as we have seen, "to introduce into the bill of lading all those conditions of the charter-party which would have to be performed by the receiver of the goods;"(*x*) but not to introduce every stipulation of the charter-party, or any conditions which are inapplicable to the bill of lading or inconsistent with its express terms.(*y*) Accordingly it has been held to preserve the liens conferred by the charter-party:(*z*) but not to incorporate in the bill of lading the "excepted perils" clause,(*a*) or the cesser of liability clause,(*b*) or an arbitration clause,(*c*) contained in the charter-party; nor to effect an alteration in the rate of freight named in the bill of lading.(*d*)

Where indorsee has notice of interest of consignor or other persons in the goods.

§ 346. The transfer of the bill of lading will confer no title to the goods if the transferee has notice (*e*) or knowledge at the time of transfer of any circumstance which ought in fairness to the consignor or to third persons to prevent his taking it. As, for example, where he knows that the consignee is insolvent, and the goods have not been paid for, so that the consignor will be entitled as against the consignee to stop them *in transitu*; (*f*) or that by

(*s*) *Shepherd* v. *Harrison*, L. R. 4 Q. B. 196; 493; 5 H. L. 116; *Rew* v. *Paine*, 53 L. T. 932.

(*t*) *Smith* v. *Sieveking*, 4 E. & B. 945; 5 *ib.* 589.

(*u*) *Chappel* v. *Comfort*, 10 C. B. N. S. 802.

(*x*) Per Lord Esher, M.R., *Serraino* v. *Campbell*, (1891) 1 Q. B. at p. 289; *supra* § 307.

(*y*) *Gardner* v. *Trechmann*, 15 Q. B. D. 154; *Gullischen* v. *Stewart*, 13 *ib.* 317.

(*z*) *Wegener* v. *Smith*, 15 C. B. 285, and cases cited *supra* § 307.

(*a*) *Russell* v. *Niemann*, 17 C. B. N. S. 163; *Serraino* v. *Campbell*, (1891) 1 Q. B. 283; affg. 25 Q. B. D. 501.

(*b*) *Gullischen* v. *Stewart*, 11 Q. B. D. 186; 13 *ib.* 317.

(*c*) *Hamilton* v. *Mackie*, 5 T. L. R. 677.

(*d*) *Gardner* v. *Trechmann*, 15 Q. B. D. 154.

(*e*) The omission of the words "or order or assigns," does not amount to constructive notice of such a circumstance. *Henderson* v. *Comptoir d'Escompte*, L. R. 5 P. C. 253.

(*f*) See per Lord Ellenborough, C.J., *Cumming* v. *Brown*, 9 East, 506, 514.

reason of the rejection of the goods by the consignee, the consignor is entitled to redelivery of the goods; (*g*) or that third persons have by purchase or otherwise acquired a property or interest in the goods.(*h*)

When holder may transfer greater rights than he possesses: (1) So as to defeat stoppage *in transitu*.

§ 347. Although, as has been pointed out above, the bill of lading is not in strictness a negotiable instrument, yet the holder may in some cases transfer a greater right than he himself has. Such a case occurs where the authorised holder of a bill of lading of goods which have not been paid for transfers the bill to a *bonâ fide* indorsee for value, and so deprives the vendor of the goods of his right to stop them *in transitu*.(*i*)

(2) When "mercantile agent" within the Factors Act.

Another case occurs where the holder of the bill of lading is a "mercantile agent" within the meaning of the Factors Act, 1889,(*k*) by sect. 2 sub-s. 1 of that Act, where such an "agent is, with the consent of the true owner, in possession of . . . . the documents of title (*l*) to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner . . . . provided that the person taking under the disposition acts in good faith, and has not at the time . . . . notice" of the limitation agent's want of authority. Sub-sect. 2 gives the same effect to a sale, pledge, or disposition to a *bonâ fide* transferee by a mercantile agent who has remained in possession of documents of title after the consent of the owner has been determined, or who has obtained possession of documents of title by reason of his having been with the consent of the owner in possession of the goods represented thereby, or of any other documents of title to them.

As against shipowner.

§ 348. It has been sufficiently shown above (*m*) that where the authorised holder is the shipper of the goods, and is by charter-party subject to onerous conditions as to delivery, which are not contained or incorporated in the bill of lading, he can, as against the shipowner, transfer a greater right than he himself possesses; namely, a right to delivery free from such conditions.

And so, where an arrangement had been entered into between the shipper and various consignees, giving to certain of them priority in case of short shipment, which in fact occurred, and a consignee who was postponed to the others assigned his bill of

(*g*) *Batut* v. *Hartley*, L. R. 7 Q. B. 594.

(*h*) *Dick* v. *Lumsden*, 1 Peake, 189; *Gilbert* v. *Guignon*, L. R. 8 Ch. 16.

(*i*) *Infra*, Chap. VII.; *Lickbarrow* v. *Mason*, 11 L. C., 9th ed. 737, and notes thereto.

(*k*) 52 & 53 Vict. c. 45. "Mercantile agent" means "a mercantile agent having in the customary course of his business as such agent authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods." Sect. i.

(*l*) This includes bills of lading, *ib.*

(*m*) *Supra* §§ 305 *et seq.*, 344.

lading for value to a *bonâ fide* transferee without notice of the arrangement, it was held that such transferee was entitled to claim full delivery from the shipowner, although the arrangement had been made without the shipowner's privity.(*n*)

Whether transfer of bill of lading passes the entire property in the goods, is a question of intention.

§ 349. The question whether the property in the goods, as distinguished from the mere right to require delivery, passes to the consignee or indorsee "upon or by reason of the consignment or indorsement," is important in so far as it determines the rights and liabilities of the consignee or indorsee under the contract contained in the bill of lading.(*o*) This question, however, is one which affects shipowners and merchants more nearly than masters, whose duty in case of dispute has been indicated above, and who should not take upon themselves to decide between rival claimaints.(*p*) It is sufficient here to mention that the transfer, whether by indorsement or otherwise, is *primâ facie* evidence that the property in the goods passes to the transferee; (*q*) but that this inference may be displaced by evidence of a contrary intention. In other words, the question whether the entire property in the goods, or a special and limited property only passes to the transferee, depends on the intention of the parties and the contract between them, in exactly the same way as if the subject of transfer were the goods themselves and not the bill of lading. Where, for example, the bill of lading was indorsed to a bank by way of security for advances, it was held that the property in the goods did not pass to them, so as to render them liable to the shipowners on the contracts contained in the bill of lading.(*r*)

The transfer of a bill of lading, without value or consideration for such transfer, as, for instance, to a factor or agent, does not transfer any property in the goods.(*s*)

The effect of the transfer of the Bill of Lading upon the Contract contained therein.

Before the Bills of Lading Act.

§ 350. It has already been mentioned (*t*) that before the Bills of Lading Act, 1855,(*u*) the transfer of a bill of lading did not,

(*n*) *The Emilien Marie*, 44 L. J. Ad. 9.

(*o*) See 18 & 19 Vict. c. 111. s. 1.

(*p*) *Supra* § 323.

(*q*) *Hibbert* v. *Carter*, 1 T. R. 745; per Lord Westbury, *Barber* v. *Meyerstein*, L. R. 4 H. L. at p. 336; *The John Bellamy*, L. R. 3 Ad. 129; *Dracachi* v. *Anglo-Egyptian, &c., Co.*, L. R. 3 C. P. 190.

(*r*) *Sewell* v. *Burdick*, 10 Ap. Ca. 74 (reversing *Burdick* v. *Sewell*, 13 Q. B. D. 159, and restoring the judgment of Field, J., 10 *ib.* 363), where the cases are collected and discussed. A useful summary of principles to be deduced from the authorities will be found in Benjamin on Sale, 4th ed. pp. 369–371. See in addition to the cases there cited, *Inglis* v. *Stock*, 10 Ap. Ca. 263; affg. *Stock* v. *Inglis*, 12 Q. B. D. 564; *The Glamorganshire*, 13 Ap. Ca. 454; *Rew* v. *Paine*, 53 L. T. 932.

(*s*) "There must be value upon the indorsement of a bill of lading, or no property in the goods is thereby transferred." Per Lord Ellenborough, *Waring* v. *Cox*, 1 Camp. 369; *Newsom* v. *Thornton*, 6 East, at p. 40; Blackburn on Sale, 2nd ed. 403; 1 Parsons, Sh. 193; and see *Dracachi* v. *Anglo, &c., Co.*, L. R. 3 C. P. 190, 192.

(*t*) § 339 *supra*.

(*u*) 18 & 19 Vict. c. 111.

like that of a bill of exchange, confer any right on the assignee to sue upon the contract expressed thereby. The transfer of the bill of lading, at the most, only transferred the *property* in the goods. It did not transfer the *contract*.(x)

Upon refusal to deliver the goods when they arrived, the transferee of the bill of lading might, even before the Act, in cases where he had, whether by the transfer or otherwise, a property in and the right to the possession of them, sue the owners or the master for the wrongful conversion of the goods,(y) because the property in the goods was by the transfer of the bill of lading transferred to the transferee; but he could not maintain an action for a breach of the contract contained in the bill of lading to which he had not been a party, nor was he liable upon it.(z)

In these circumstances the following enactment was passed:—

Bills of Lading Act, 1885: 18 & 19 Vict. c. 111.

Whereas, by the custom of merchants, a bill of lading of goods, being transferable by indorsement, the property in the goods may thereby pass to the indorsee; but nevertheless, all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property:

Be it therefore enacted as follows:—

Rights under bills of lading to vest in consignee or indorsee.

1. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass,(a) upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect rights of stoppage *in transitu* or claims for freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Contract not transferred unless property transferred.

§ 351. The condition upon which this statute transfers the contract contained in the bill of lading, with its rights and liabilities, to the consignee of the goods named in the bill of lading, or to the indorsee of the bill of lading, is the passing of the property in the goods to the consignee or indorsee, upon or by reason of the consignment or indorsement, and not the mere indorsement of the bill of lading.(b) Therefore, to entitle the indorsee of a bill of lading to sue on the contract contained therein, the circumstances under which the bill has been indorsed

(x) *Thompson* v. *Dominy*, 14 M. & W. 403; and cases cited *supra* § 339.

(y) *Bristol, &c., Bank* v. *M. Ry.*, (1891) 2 Q. B. 653; *Hoille* v. *Smith*, 1 B. & P. 563; see also *Evans* v. *Nichol*, 3 M. & G. 614; *Waring* v. *Cox*, 1 Camp. 369.

(z) *Howard* v. *Shepherd*, 9 C. B. 297; *Thompson* v. *Dominy*, 14 M. & W. 403 *Sanders* v. *Vanzeller*, 4 Q. B. 260.

(a) See § 349 *supra*.

(b) *Sewell* v. *Burdick*, 10 Ap. Ca. 74; *sup.* § 349; *The St. Cloud*, B. & L. 4; *The Felix*, L. R. 2 Ad., 273, 277.

must be such that the property in the goods shall have passed to the indorsee upon or by reason of the indorsement.(*c*) In other words, if the property be not transferred, the contract is not transferred. But, if the property is in the consignor, and if he, by consignment, or by indorsement and delivery of the bill of lading, transfer the property, he transfers also, by virtue of the Act, all his rights under the contract contained in the bill of lading to the consignee or indorsee, who becomes subject also to all the liabilities of the consignor.(*d*) And it is no answer to an action by an indorsee for a breach of the contract, that, by reason of the terms on which he acquired the property, he has sustained no loss. It has been suggested that in such a case he may recover as trustee for his indorser.(*e*)

Position of pledgee of bill of lading.

The transfer of a bill of lading by way of pledge does not, as we have seen, pass to the pledgee the property in the goods;(*f*) he therefore does not take either benefit or burthen under the Bills of Lading Act. But he acquires a special property, sufficient to enable him, in case of non-delivery or mis-delivery, to sue, apart from the Act, for a conversion.(*g*) And, as has been seen above,(*h*) his presentation of the bill of lading, and receipt of the goods thereunder, without repudiation of the conditions upon which by the terms of the bill delivery is to be made, afford evidence of an implied contract that he will be bound by those conditions.

Effect of indorsement on liabilities. Indorsement over passing property discharges consignee or indorsee.

§ 352. The transfer of the property by indorsement does not relieve the shipper of his liability for freight.(*i*) But if the consignee or indorsee indorses over the bill of lading so as to pass the property to a third party, he passes on to such third party all his rights and liabilities, including the liability for freight.(*k*) A consignee or indorsee does not, however, by a sale or agreement to transfer the property, without indorsement of the bill of lading, divest himself of his liability thereunder.(*l*) Nor can he by indorsement, in whatever terms it is made, unaccompanied by a transfer of the property, transfer the liability without the master's or shipowner's assent.(*m*)

Semble: Transfer after right delivery of the goods

§ 353. We have seen (*n*) that a bill of lading continues in force, and retains all its virtue and effect, until there has been a

(*c*) *The Freedom*, L. R. 3 P. C., 594, 599. And it seems that if the property was in the indorsee before the indorsement, the Act would have no operation. See Carver, § 66a, and the Scotch authorities there cited.

(*d*) See, in addition to cases in preceding note, per Willes, J., *Short* v. *Simpson*, L. R. 1 C. P. 255.

(*e*) *The Wilhelm Schmidt*, 25 L. T. 34.

(*f*) *Sewell* v. *Burdick*, 10 Ap. Ca. 74; *supra* § 349.

(*g*) *Bristol, &c., Bank* v. *M. R.*, (1891) 2 Q.B. 653.

(*h*) § 156.

(*i*) See *Fox* v. *Knott*, 6 H. & N. 630; 17 & 18 Vict. c. 111, s. 2.

(*k*) *Smurthwaite* v. *Wilkins*, 11 C. B. N. S. 842.

(*l*) *Fowler* v. *Knoop*, 4 Q. B. D. 299.

(*m*) *Lewis* v. *M'Kee*, L. R. 4 Ex. 58.

(*n*) *Supra* § 340.

does not transfer contract.

complete delivery of the goods to a person having a right to receive them, or something equivalent to such delivery: it is not spent or exhausted by the landing or warehousing of the goods under a stop for freight,(*o*) nor by misdelivery.(*p*) But it seems that one who takes a bill of lading by indorsement, after the goods have been delivered in fulfilment of the contract to another person, would not be an indorsee within 18 & 19 Vict. c. 111, or have the rights which are conferred by that statute.(*q*)

Reindorsement retransfers contract.

§ 354. If a consignor indorses a bill of lading as a security for an advance, and upon the repayment of the advance, the bill of lading is, while still an effective instrument, reindorsed and delivered to him, he is remitted to all his original rights whether by statute or at common law, and is entitled to sue the shipowners for a breach of their contract with him, whether occurring before or after such reindorsement.(*r*)

Respective Liabilities of Master, Owner, and Charterer upon the Contract contained in the Bill.(*s*)

§ 355. The master is the agent of his principals, who are generally the shipowners, to sign bills of lading for goods which he receives on board. We have seen that he can generally speaking, sue on the contract contained in a bill of lading so signed by him.(*t*) He is also liable to be sued upon it, for by his signature he binds himself, as well as his principals, to its due performance.(*u*)

To consignor.

If a consignor takes a bill of lading, deliverable "*unto order or to his assigns*," he controls the possession of the master and makes him accountable to deliver the cargo according to the terms of the bill of lading.(*x*)

Consignor's rights under bill of lading.

And although the goods have been shipped in a general ship, and the master has signed, at consignor's request, a bill of lading for delivery to a named consignee; or the consignor has indorsed in blank a bill drawn to his order, still, until the goods, or the bill of lading which represents them, are, by the consignor's authority, actually delivered to the consignee or his agent, with the intention of vesting a right of property in the consignee, the consignor may revoke the bill of lading, or by indorsement may vary it,

(*o*) *Barber* v. *Meyerstein*, L. R. 4 H. L. 317; L. R. 2 C. P. 38; 661.

(*p*) *Short* v. *Simpson*, L. R. 1 C. P. 248; *Bristol, &c., Bank* v. *M. R.*, (1891) 2 Q. B. 653.

(*q*) See per Montague Smith, J., L. R. 1 C. P. at p. 255; see, however, per Field, J., *The Rona*, 51 L. T. at p. 30.

(*r*) *Short* v. *Simpson*, L. R. 1 C. P. 248; per Willes, J., at p. 255.

(*s*) As to the master's general responsibility for the safety of the goods, see § 236 *et seq.*, *supra*.

(*t*) *Supra* § 314.

(*u*) Story on Agency, 294.

(*x*) *Shepherd* v. *Harrison*, L. R. 5 H. L. 116.

or change his purpose, or attach conditions to it.(*y*) And for any delivery contrary to such revocation or change of purpose the master, as well as his owners, will be liable to the consignor.

To consignee.

When the consignor parts with the bill of lading to a consignee or indorsee, with the intention of thereby passing the property—*i.e.* the whole property—in the goods, the master becomes personally liable upon the contract contained in the bill to such consignee or indorsee, to whom, as has been seen, all the consignor's rights of suit are transferred by the Bill of Lading Act, 1855.(*z*) And apart from the Act, the master will also be liable in case of non-delivery to a consignee who has only a special property in the goods, for this is sufficient, as was pointed out above,(*a*) to enable him to sue for a conversion.

Whether master's signature binds owner or charterer.

§ 356. The question has frequently been raised whether, where the ship is chartered, it is the owners or the charterers who are liable upon a bill of lading given by the master. This question, affecting, as it does, rather owners and charterers than masters, does not call for minute examination here. It is sufficient to point out that, unless, at all events, the charter-party amounts to a demise of the ship, so that the charterer becomes *pro hâc vice* owner,(*b*) a person who ships goods on board a vessel, unaware that she has been chartered to another, is warranted in assuming that the master is acting by virtue of his ordinary authority, and therefore for the shipowners, in signing bills of lading. Until the fact that such a master's authority has been put an end to, is brought to the knowledge of a shipper of goods, the latter has a right to look to the shipowner as the principal with whom the contract is made. And this may be so although by the agreement between the owner and the charterers the master has authority to bind the latter.(*c*)

Liabilities of shipowner, when ship is chartered, but not demised.

If therefore the master is not in fact authorised to bind the shipowners by bills of lading, it becomes his duty to give to shippers distinct notice of his want of authority; and this may best be done by using a form of bill of lading appropriate for the purpose.(*d*)

(*y*) *Mitchell* v. *Ede*, 11 Ad. & El. 888; *Gurney* v. *Behrend*, 3 El. & Bl. 622; *Brandt* v *Bowlby*, 2 B. & Ad. 932. As to when consignors may require redelivery of the cargo, and the master's rights in such a case, see §§ 316-318 *sup.*

(*z*) 18 & 19 Vict. c. 111, s. 1; *supra* § 350.

(*a*) § 351.

(*b*) As in *Baumvoll, &c.*, v. *Gilchrest*, (1892) 1 Q. B. 253; (1893) A. C. 9; see also *Colvin* v. *Newberry*, 1 C. & F. 283, and cases cited *supra* § 301.

(*c*) *Sandeman* v. *Scurr*, L. R. 2 Q. B. 86, per Cockburn, C.J., at p. 97; see also *The Patria*, L. R. 3 Adm. 436; *The Figlia Maggiore*, 2 *ib.* 106; *The St. Cloud*, B. & L. 4, 15; *Omoa, &c., Co.* v. *Huntley*, 2 C. P. D. 464; cp. *Wagstaff* v. *Anderson*, 5 C. P. D. 171. For a recent case in which charterers were held liable, see *Herman* v. *Royal Exchange, &c., Co.* 1 C. & E. 413.

(*d*) As in *Hayn* v. *Culliford*, 4 C. P. D. 182.

Meaning and effect of exceptions in the Bill of Lading.

Exceptions limit liability, but not duty

§ 357. Speaking generally, the "exceptions" in the contract of carriage limit the *liability*, but not the *duty* of the owners and master. They do not relieve the owners or master from the obligation to navigate with ordinary skill and care. It is still their duty to do what they can, by reasonable skill and care, to avoid all perils, including the excepted perils. If, notwithstanding such skill and care, damage does occur from these perils, the owners and master are released from liability; but if their negligence or breach of contract,(*e*) or barratry of the master or crew,(*f*) has brought on the peril, or has aggravated the consequences,(*g*) then the damage is attributable to their breach of duty, and the exceptions do not aid them,(*h*) unless aptly framed for that purpose.

do not in general excuse

negligence, breach of contract,

But even where the negligence of the shipowner's servants is not itself an excepted peril, the exceptions in the bill of lading throw upon the plaintiff, in an action for damage or loss to the goods *primâ facie* occasioned by a peril which is excepted, the burthen of proving that it was such negligence that caused the mischief.(*i*)

unseaworthiness,

Again, the exceptions do not, in the absence of an express provision, protect the shipowner or master against the consequences of providing an unseaworthy ship, and the ordinary exception of negligence of the master and crew is insufficient for this purpose;(*k*) nor from the consequences of perils encountered during deviation.(*l*) And inasmuch as "the office of the bill of lading is to provide for the rights and liabilities of the parties in reference to the contract to carry, and is not concerned with liabilities to contribution in general average," the exceptions in the bill do not, unless the contrary appears, relieve the shipowner from such liability to contribute.(*m*)

or mishap during deviation.

Nor from contribution in general average.

§ 358. It remains to consider the meaning attached by the courts to the various exceptions commonly found in bills of lading.

(*e*) See *Royal Exchange, &c., Co.* v. *Dixon*, 12 Ap. Ca. 11; affg. *Newall* v. *Same Co.*, 33 W. R. 868.

(*f*) *The Chasca*, L. R. 4 Ad. 447.

(*g*) *Notara* v. *Henderson*, L. R. 5 Q. B. 346; 7 *ib.* 225; *The Rona*, 51 L. T. 28.

(*h*) Per Lush, J., *Gill* v. *Manch. R. Co.*, L. R. 8 Q. B. 196; *Czech* v. *General Steam, &c.*, L. R. 3 C. P. 17; *Leuw* v. *Dudgeon*, *ib.* n.; *Phillips* v. *Clark*, 2 C. B. N. S. 156; *Lloyd* v. *Gen. &c., Co.*, 3 H. & C. 284; *Tattersall* v. *National, &c., Co.* 12 Q. B. D. 297; *Grill* v. *General Iron, &c., Co.*, L. R. 1 C. P. 600; 3 C. P. 476; and see per Lord Herschell, *The Xantho*, 12 Ap. Ca. at p. 510; per Lord Watson, *Hamilton* v. *Pandorf*, *ib.* at p. 526.

(*i*) *Czech* v. *General, &c.*, L. R. 3 C. P. 14; *The Helène*, L. R. 1 P. C. 231; disting. *Taylor* v. *Liverpool, &c., Co.*, L. R. 9 Q. B. 546.

(*k*) *Steel* v. *State Line*, 3 Ap. Ca. 72; *The Glenfruin*, 10 P. D. 103; *Gilroy* v. *Price*, (1893) A. C. 56; *Tattersall* v. *National, &c., Co.*, 12 Q. B. D. 297. For an example of conditions limiting the warranty of seaworthiness, see *The Cargo ex Laertes*, 12 P. D. 187.

(*l*) *Leduc* v. *Ward*, 20 Q. B. D. 475; *Glynn* v. *Margetson*, W. N. (1893) 76, affg. (1892) 1 Q. B. 337; see §§ 175–178 *supra*.

(*m*) *Schmidt* v. *Royal Mail S.S. Co.*, 45 L. J., Q. B. 646; *Crooks* v. *Allan*, 5 Q. B. D. 38, 40; and see *Burton* v. *English*, 12 Q. B. D. 218, 222.

"The act of God."

The first words of the ordinary exception are "*the act of God.*" This limitation of liability exists at common law in the case of all common carriers, without any express agreement to that effect.(*n*) This exception includes only such events as could not happen by the intervention of man, as storms, lightning, tempests, and the like.(*o*) And in order to fall within its meaning they must be direct, violent, sudden, and irresistible by the exercise of any reasonable skill and diligence.(*p*) Thus in a case of inland carriage, a loss caused by a sudden gust of wind has been held to be within the exception.(*q*)

But a loss caused by a mere accidental circumstance—*e.g.* the tide in boisterous weather lifting up a ship and pitching her on the rudder of another ship;(*r*) or a loss caused by fire, which although caused by no negligence on the part of the carrier, yet was not occasioned by lightning (*s*)—is not within the exception. The expression is "confined to events which cannot be foreseen, or which, if they can be foreseen, cannot be guarded against" (*t*) by any reasonable exertions. But the carrier will be protected when some other circumstance for which he is not responsible unites with the act of God to produce an irresistible combination, though neither would have been irresistible if unaccompanied by the other.(*u*)

"Dangers and accidents of seas, rivers, and navigation."

§ 359. The exception, "*dangers and accidents of the seas, rivers, and navigation,*" includes, in addition to the common risk of navigation from rocks, sands, heavy seas (*x*) and the like, loss by collision,(*y*) although in this as in other cases an owner or master cannot avail himself of the exception where the peril was brought about by negligence for which he is responsible.(*z*)

Damage by straining of wine casks in heavy weather.

It has also been held to cover damage caused to the cargo by the oozing of wine from the casks through straining in bad weather, provided the cargo is properly stowed, or is stowed by persons for whose acts the shipowner is not responsible;(*a*) damage by sea-water which escaped through a hole gnawed in a pipe by rats on board the vessel;(*b*) and damage by sea-water admitted through the vessel accidentally canting over in the

Sea-water admitted by rats;

(*n*) *Coggs* v. *Bernard*, 2 Ld. Raym. 909; 1 Smith, L.C., 9th ed. 201, 215; *Dale* v. *Hall*, 1 Wilson, 281; *The Proprietors of the Trent Navigation* v. *Wood*, 3 Esp. 127.

(*o*) See per Lord Mansfield in *Forward* v. *Pittard*, 1 T. R. 33.

(*p*) *Nugent* v. *Smith*, 1 C. P. D. 19, 423; per Cockburn, C.J., at pp. 434–438; and see per Martin, B., *Oakley* v. *Portsmouth, &c., Co.*, 11 Ex. 618.

(*q*) *Amies* v. *Stevens*, 1 Str. 128.

(*r*) *Oakley* v. *The Portsmouth, &c., Co.*, 11 Ex. 618; *Smith* v. *Shepherd*, cited *ib.* 622.

(*s*) *Forward* v. *Pittard*, 1 T. R. 27.

(*t*) Per Lord Coleridge, C.J., *Reg.* v. *Commissioners, &c., for Essex* (Fobbing), 14 Q. B. D. at p. 574.

(*u*) *Nugent* v. *Smith*, *ubi sup.*

(*x*) See *The Cressington*, (1891) P. 152.

(*y*) *Buller* v. *Fisher*, 3 Esp. 67; *The Xantho*, 12 Ap. Ca. 503; *Garston Sailing Ship Co.* v. *Hickie*, 18 Q. B. D. 17.

(*z*) 12 Ap. Ca. at p. 510; see notes (*e*) to (*h*) *supra*.

(*a*) *The Catherine Chalmers*, 32 L. T. 847.

(*b*) *Hamilton* v. *Pandorf*, 12 Ap. Ca. 518; reversing *Pandorf* v. *Hamilton*, 17 Q. B. D. 670, and restoring the judgment of Lopes, L.J., 16 *ib.* 629.

by accident in course of unloading.

course of unloading, and after the crew had been discharged.(c) But it does not cover damage by sea-water admitted by the barratrous act of the crew.(d)

"Risk of boats."

Under a clause which was usual in the case of vessels trading to the West Indies, where it was the practice to carry the cargo to and from the shore in boats, excepting "dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, save risk of boats, so far as ships are liable thereto," the ship's boat, with cargo on board for delivery, having been lost in a hurricane, it was held that the shipowner was under no greater liability in respect of the goods while in the boat than while on board ship, and that he was protected by the exception.(e)

It was held in some early cases that a loss by pirates came within the exception of "perils of the sea;"(f) but this particular danger is now generally the subject of an express exception.

To what cases it does not extend: damage by rats.

§ 360. The exception under consideration does not relieve from liability for injury caused by rats to the goods themselves.(g) Nor does it enable the shipowner to take advantage of an impediment which is merely temporary in its nature, such as neap tides or obstruction by ice, for the purpose of evading altogether the further performance of his contract;(h) though no doubt in such a case he would incur no liability for delay occasioned by the impediment. And the seizure and sale of the goods as contraband under the revenue laws of the country at one of whose ports the ship calls in the course of her voyage is not a loss by "dangers and accidents of the seas," or of "navigation."(i) Nor does this exception, in the absence of an adequate negligence clause, cover damage by sea-water which has arisen in consequence of improper stowage, or stowage in an improper place, by persons for whose acts the master is responsible;(k) nor injury arising in part from the perishable and putrescible nature of the goods, and in part from their collocation in the ship and the want of due ventilation.(l)

Temporary obstruction does not dissolve contract.

Seizure under Revenue Laws.

Improper stowage.

"Perils of the seas" in policies of insurance.

§ 361. The words "*perils of the seas*" have received a construction in numerous cases which have arisen upon policies of insurance. And although, owing to the effect of the rule which

(c) *Laurie* v. *Douglas*, 15 M. & W. 746. This was held to be a peril of navigation; but it is doubtful whether the decision would now be followed. See *The Accomac*, 15 P. D. 208, 211; *Davidson* v. *Burnand*, L. R. 4 C. P. 117, 120.

(d) *The Chasca*, L. R. 4 Ad. 446.

(e) *Johnston* v. *Benson*, 1 B. & B. 454. The negligence clause received a similar extension in *Nottebohm* v. *Richter*, 18 Q. B. D. 63, where "cargo was to be taken from the bank in ship's boats . . . . at ship's risk."

(f) *Pickering* v. *Barclay*, 2 Roll. Ab. 248; *Barton* v. *Walliford*, Comb. 56; Abbott, 13th ed. 461; *Russell* v. *Niemann*, 17 C. B. N. S., 163, 175, per Byles, J. See, however, *Cullen* v. *Butler*, 5 M. & S. 461; Carver, § 86.

(g) *Kay* v. *Wheeler*, L. R. 2 C. P. 302; *Laveroni* v. *Drury*, 8 Ex. 166. Cp. *Rohl* v. *Parr* (damage by worms: insurance), 1 Esp. 445; *infra* § 361.

(h) *Schilizzi* v. *Derry*, 4 E. & B. 873 (a charter-party case).

(i) *Spence* v. *Chadwick*, 10 Q. B. 517. As to the exception "Restraint of Princes" see § 365 *infra*.

(k) *The Oquendo*, 38 L. T. 151.

(l) *The Freedom*, L. R. 3 P. C. 594.

precludes the shipowner from excusing himself for a loss by an excepted peril which was caused or aggravated by his own negligence or that of his servants, a contrary opinion for some time prevailed,(*m*) it is now settled that the words "perils of the seas," or their equivalent, bear the same meaning when used in a contract of carriage as when used in a policy of insurance.(*n*)

"Perils of the seas" in the policy.

The following losses have been held to be by "perils of the seas" within the meaning of policies of insurance, viz.: Collision;(*o*) death or injury caused to animals by the motion of a ship during a storm;(*p*) stranding, other than grounding in the ordinary course of navigation.(*q*)

On the other hand, injuries caused by the work of worms at sea have been held not to be a loss by "perils of the seas" within the meaning of a policy;(*r*) and the same view is taken of injuries which have occurred when a ship has been under repair on a beach within the tideway;(*s*) or by reason of her taking the ground on the falling of the tide, whilst moored in a tide-harbour in the ordinary course of her voyage.(*t*)

In *Thames and Mersey, &c., Co.* v. *Hamilton*,(*u*) part of a pump insured under a marine policy was burst, because a valve which should have let the water into the boiler was stopped up while the pump was being worked, for the purposes of navigation, by a donkey engine. It was held that this was not a loss by "perils of the seas," or within the general words of the policy. And the opinion was expressed that a loss by the explosion of the boiler of a steamship ought to fall within the same principle.(*x*)

§ 362. In view of the risk of damage arising from the nature of the goods themselves, it is a frequent practice to add to the excepted perils some such words as the following: "Heating," "decay," "putrefaction," "rust," "leakage," "breakage." "any loss arising from the nature of the goods or the insufficiency of the packages." It is held that such exceptions only cover mischief inherent or arising in the damaged goods themselves, and do not extend their protection to the case of damage by contact

"Heating," "decay," "rust," &c.

(*m*) *Woodley* v. *Michell*, 11 Q. B. D. 47; per Brett, L.J., *Chartered, &c., Bank* v. *Netherlands, &c., Co.*, 10 Q. B. D. 521, 530, 531.

(*n*) *The Xantho*, 12 Ap. Ca. 503, 510; *Hamilton* v. *Pandorf*, *ib.* 518, 525; and see per Sir J. Napier, *The Freedom*, L. R. 3 P. C. 594, 601.

(*o*) *Smith* v. *Scott*, 4 Taunt. 126.

(*p*) *Lawrence* v. *Aberdein*, 2 B. & A. 107; *Gabay* v. *Lloyd*, 3 B. & C. 793.

(*q*) *Hahn* v. *Corbet*, 2 Bing. 205; *Fletcher* v. *Inglis*, 2 B. & A. 315; *Bishop* v. *Pentland*, 7 B. & C. 219; *Redman* v. *Wilson*, 14 M. & W. 476; and see *Letchford* v. *Oldham*, 5 Q. B. D. 538, and cases there cited.

(*r*) *Rohl* v. *Parr*, 1 Esp. 445.

(*s*) *Thompson* v. *Whitmore*, 3 Taunt. 227; and see *Davidson* v. *Burnand*, L. R. 4 C. P. 117.

(*t*) *Magnus* v. *Buttemer*, 11 C. B. 876.

(*u*) 12 Ap. Ca. 484; revg. *Hamilton* v. *Thames and Mersey, &c.*, 17 Q. B. D. 195.

(*x*) Per Lord Halsbury, C., 12 Ap. Ca. 491, dissenting from *West India, &c., Co.* v. *Home and Colonial, &c., Co.*, 6 Q. B. D. 51; see the cases collected in the judgment of Lord Herschell, 12 Ap. Ca. 493.

with or proximity to other goods in which the mischief has developed.(y)

Negligence clause.

363. The effect of the negligence clause most commonly found in bills of lading is to enable the person liable on the contract to take advantage of "the dangers and accidents of the seas, rivers, and navigation, even when occasioned by the negligence, default, or error in judgment of the pilot, master, mariners, or other servants of the shipowners."(z) A similar clause, excepting "any act, neglect, or default whatsoever of the pilot, master, crew, or other servants of the shipowners," is frequently inserted in charter-parties,(a) and seems, in so far as it does not depend for its operation upon the intervention of accidents of the seas, to be somewhat wider in its effect than the clause quoted above. An exception of "negligence or default of pilot, master, mariners, or engineers, whether in navigating the ship or otherwise," introduced into the bill of lading, was held in *Norman* v. *Binnington* (b) to relieve the shipowner from liability for damage occasioned to goods by the negligence of their servants in stowing them on board the ship. But where the negligence excepted is "default of the pilot, master, or mariners in navigating the ship," or "in the navigation or management of the ship," it is held (1) that stevedores are not included among the persons enumerated; and (2) that stowage is not within the terms "navigation or management."(c)

The general result of an extensive negligence clause is to impose upon the shipper the necessity of looking to his insurers alone for almost any loss that may arise. It is sometimes sought to attain this result directly by a clause relieving the shipowner from liability "for any damage to any goods which is capable of being covered by insurance."(d) The negligence clause does not, as we have seen, affect the implied warranty of seaworthiness, unless aptly framed for that purpose.(e)

"Pirates," "Robbers," and "Thieves."

§ 364. It was a good many years ago held that an exception of "robbers" meant robbers by violence, and did not protect the carrier from liability for the loss of a box of gold dust which was stolen from a railway truck.(f) It has since been settled that an exception of "pirates, robbers, or thieves" does not relieve from liability for theft committed by persons on board the ship.(g)

(y) *Thrift* v. *Youle*, 2 C. P. D. 432; *Barrow* v. *Williams*, 7 T. L. R. 37.

(z) See for example, *The Cressington*, (1891) P. 152; *Chartered, &c. Bank* v. *Netherlands, &c., Co.*, 9 Q. B. D. 118; 10 *ib.* 521.

(a) See, *e.g.*, *The Carron Park*, 15 P. D. 203; *The Accomac*, *ib.* 208.

(b) 25 Q. B. D. 475; see also *The Duero*, L. R. 2 Ad. 393. This case is an authority for the legality of the negligence clause.

(c) *Hayn* v. *Culliford*, 3 C. P. D. 410; 4 *ib.* 182; *The Ferro*, (1893) P. 38.

(d) *Taylor* v. *Liverpool, &c., Co.*, L. R. 9 Q. B. 546; *inf.* § 364.

(e) *Steel* v. *State Line*, 3 Ap. Ca. 72, and cases cited *supra* § 357.

(f) *De Rothschild* v. *The Royal Mail, &c. Co.*, 7 Ex. 734.

(g) *Taylor* v. *Liverpool, &c. Co.*, L. R. 9 Q. B. 546.

If it is intended to protect from theft by persons in the service of the ship, explicit language must be used. The addition of the words "of whatever kind, whether on board or not," is not sufficient for this purpose,(*h*) though it would no doubt have the effect of relieving the shipowner from the consequences of theft by a passenger.

It has also been held that the words "damage . . . . which is capable of being covered by insurance" do not cover the case of abstraction of the goods; and that, to bring a loss by theft within an exception of "barratry," the shipowner must prove affirmatively that it was the act of one of the crew, and that this burthen is not discharged if it may have been that of a passenger.(*i*)

"Restraints of princes and rulers" do not include legal proceedings.

An "actual operative restraint."

§ 365. The "acts or restraints of princes and rulers" provided against in a bill of lading refer to the forcible interference of a state or government, and do not extend to legal proceedings in foreign courts.(*k*) And where by charter-party the master was to proceed to St. Petersburg, and there load from the freighter's factor a complete cargo, and the charter-party contained the exception "*restraint of princes and rulers during the voyage*," it was held that these words meant an actual and operative restraint, and not merely an expected and contingent one, and, therefore, that the master was liable to the freighter for not having loaded a complete cargo, although his not having done so was caused by a *bonâ fide* and well-grounded apprehension that if he waited any longer an embargo would be laid upon the ship.(*l*)

There can be no doubt, however, that actual seizure under an embargo is within the terms of the exception, unless perhaps a lawful act by the law of the country of him who seeks to rely upon it.(*m*) Nor is it necessary in order to give effect to the exception that there should be a physical interference with the ship or goods. It is sufficient if an obstacle to the performance of the contract arises from an act of state.(*n*) Blockade, for example, is held to be a "restraint of princes."(*o*) And where a ship was chartered to load grain at a foreign port, and on arriving there her master found that the port was occupied by invading forces, and that the export of grain was prohibited, this

Blockade.

(*h*) *Steinman* v. *Angier Line*, (1891) 1 Q. B. 619.

(*i*) *Taylor* v. *Liverpool, &c., Co.*, L. R. 9 Q. B. 546.

(*k*) *Finlay* v. *Liverpool, &c., Co.*, 23 L. T. 251.

(*l*) *Atkinson* v. *Ritchie*, 10 East, 530; see, however, *The Teutonia*, L. R. 4 P. C. 471, and other cases cited *supra* § 212.

(*m*) See *Aubert* v. *Gray*, 3 B. & S. 163 (action on a policy).

(*n*) Per Cockburn, C.J., *Geipel* v. *Smith*, L. R. 7 Q. B. 404, 410.

(*o*) *Geipel* v. *Smith*, *ubi sup.*; per Cur. *Rodocanachi* v. *Elliott*, L. R. 9 C. P. at p. 523; see also *Adamson* v. *Newcastle, &c., Association*, 4 Q. B. D. 462.

was held to be a "restraint of princes" within the exception in the charter-party.(*p*)

"The king's enemies."

§ 366. The exception "the king's enemies" is understood to include the enemies of the sovereign of the carrier. Therefore where a bill of lading of goods shipped on board a Mecklenburg ship for this country contained this exception, it was held to protect the master against the consequences of hostile seizure by the enemies of his sovereign, the Duke of Mecklenburg.(*q*)

So, a vessel sailing under the flag of the North German Confederation was chartered to take on board a cargo at a port in the Sea of Azov, to proceed therewith to a safe port in the United Kingdom, or on the Continent between Havre and Hamburg, calling at Cork, Falmouth, or Plymouth, for orders, and deliver the cargo, on being paid the stipulated freight, "*the act of God, &c., restraint of princes and rulers, &c., excepted.*" The ship proceeded to Berdiansk and took on board a cargo of wheat. The master signed a bill of lading, by which the cargo was consigned according to the tenor of the charter-party, and the cargo was to be delivered on freight being paid according to the charter-party, with all other conditions expressed therein. The bill of lading was indorsed by the shipper to S. and Co., who were the charterer's agents in London. The ship sailed from Berdiansk, and on the 8th of August put into Falmouth, and her master applied to S. and Co. for orders. And on the 3rd of September he received orders from the plaintiffs, to whom S. and Co. had indorsed the bill of lading, to proceed to Leith.

After the making of the charter-party and the signing of the bill of lading, a war broke out between the North German Confederation and France, and continued until after the 21st Sept. From the time the master received orders to proceed to Leith, until after the 21st Sept., armed French cruisers were cruising in the Channel and North Sea, and German ships could not sail in those seas beyond the limits of neutral waters, without incurring risk of capture. When the master received orders to proceed to Leith, and on other occasions after that time and before the arrest of the ship, he expressed his willingness to sail for Leith the first favourable opportunity. But from that time until the arrest of the ship, the winds being light and variable, or unfavourable for a passage to Leith, the master kept the ship at Falmouth waiting for a leading wind, which would enable her to make a good passage and afford her a fair chance of escaping the French cruisers.

(*p*) *Bruce* v. *Nicolopulo*, 11 Ex. 129. See further as to the effect of "excepted perils" and *vis major* interfering with the performance of charter-parties, §§ 147–149 *supra*.

(*q*) *Russell* v. *Niemann*, 17 C. B. N. S. 163.

On the 15th Sept. the plaintiffs instituted a suit against the ship, alleging as the cause of action the neglect of the master to proceed to Leith; and on the 21st the ship was arrested in the suit at Falmouth. It was held, that the delay of the master, under the circumstances, was justifiable by the existence of the excepted peril of the enemies of his sovereign.(*r*)

Commencement of operation of exceptions.

§ 367. We have seen the effect of the words "during the said voyage" when used in charter-parties in connection with the excepted perils clause.(*s*) In the absence of any such limitation, the clause when found in a bill of lading comes into operation when once the goods have been received on board and the bill of lading has been given for them, "and it is immaterial when the voyage commences."(*t*) It has been held, however, that the use of the words "in navigating the ship," in the negligence clauses, excludes from its protection the consequences of negligent stowage,(*u*) or negligent discharging.(*x*)

Charter-party exceptions may be incorporated in bill of lading.

§ 368. If it is intended to introduce into the bill of lading the exceptions contained in the charter-party, this must be done in clear and express terms.(*y*) It is well settled that the clause, "paying freight and all other conditions as per charter-party," is not sufficient for this purpose.(*z*)

But bill of lading exceptions do not affect liability to charterer,

It is also to be remembered that as between the shipowner and charterer the charter-party is the contract and the bill of lading is only a receipt for the goods, and that therefore the exception in the bill of lading of perils which are not excepted in the charter-party will not relieve the shipowner from any liability to the charterer.(*a*) And in a case where the charter-party contained the following clause: "the performance . . . . of this agreement is subject to the exceptions and perils mentioned in the bill of lading according to form attached hereto, and the agreement . . . . shall be read as if such clauses . . . . were herein repeated; all cargo shipped by the charterers . . . . shall be received and carried subject to the terms and conditions of the said bill of lading, *except as altered by these presents*," it was held that exceptions inconsistent with an absolute obligation created by the charter-party to perform certain duties, unless prevented by

(*r*) *The Heinrich*, L. R. 3 Adm. 425; see also *The Wilhelm Schmidt*, 25 L. T. 34. It seems that the master would have been excused from the consequences of the delay had there been no such exception in his contract. See § 212 *supra*, and cases there cited.

(*s*) § 147 *supra*.

(*t*) Per A. L. Smith, J., *Norman* v. *Binnington*, 25 Q. B. D. at p. 478. Cp. *Nottebohm* v. *Richter*, 18 Q. B. D. 63.

(*u*) *Hayn* v. *Culliford*, 3 C. P. D. 410. The judgment was affirmed, but without deciding this point, 4 C. P. D. 182.

(*x*) *The Accomac*, 15 P. D. 208.

(*y*) See *The Patria*, L. R. 3 Ad. 436.

(*z*) *Serraino* v. *Campbell*, (1891) 1 Q. B. 283; affg. 25 Q. B. D. 501, and approving *Russell* v. *Niemann*, 17 C. B. N. S. 163. See further as to the effect of this clause § 307 *supra*.

(*a*) *Rodoconachi v. Milburn*, 17 Q. B. D. 316; 18 *ib.* 67.

certain causes therein specified, were not incorporated in the charter-party.(*b*)

By what law contract governed.

§ 369. The foregoing discussion relates only to the law concerning bills of lading as administered by the courts of this country. The question however, which has frequently arisen where goods have been carried in a foreign ship, by what law the contract of affreightment is to be governed, must not be altogether passed over. The general rule in such cases is that the law of the flag is to prevail.(*c*) And the result of the cases seems to be that, so far as regards the authority of the master to deal with the cargo in case of emergency, this rule will be followed, unless the contract contains an express provision to the contrary.(*d*) The extent of his authority in such a case may perhaps be regarded as something outside the contract.(*e*) At all events where the question to be determined relates to the rights and liabilities arising under the contract, or to the construction or validity of its terms, the rule is less strictly followed, and in such cases at any rate the question is, what was the law which the parties contemplated as being the law governing this contract?"(*f*) To ascertain the answer to this question all the circumstances attendant on the making of the contract are to be looked at.(*g*)

(*b*) *Sansinena* v. *Houston*, 63 L. T. 246; 95 L. T. J. 33 (H. L.).

(*c*) *Lloyd* v. *Guibert*, L. R. 1 Q. B. 115; *The August*, (1891) P. 328; per Brett, L.J., *Chartered, &c, Bank* v. *Netherlands, &c., Co.*, 10 Q. B. D. at p. 529; *The Patria*, L. R. 3 Ad. 436, 455.

(*d*) *Lloyd* v. *Guibert, ubi sup.; The August, ubi sup.; The Gaetano and Maria*, 7 P. D. 137 (reversing 7 P. D. 1).

(*e*) See per Sir R. Phillimore, L. R. 3 Ad. at p. 453.

(*f*) Per Lord Halsbury, C., *re The Missouri S.S. Co.*, 42 Ch. D. at p. 336.

(*g*) *Chartered, &c., Bank*, v. *Netherlands, &c., Co.*, 10 Q. B. D. 521, 529, 540; *re The Missouri S.S. Co*, 42 Ch. D. 321; *The Wilhelm Schmidt*, 25 L. T. 34; and see *P. & O. S.S. Co.* v. *Shand*, 3 Moo. P. C. N. S. 272.

CHAPTER VII.

STOPPAGE IN TRANSITU.

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What it is and its effect.

§ 370. When goods are consigned by way of sale on credit, by one merchant to another, it sometimes happens that the consignee becomes insolvent while the goods are on their way. In such cases, as it would be unjust that the consignor's goods should be applied in payment of the consignee's debts,(*a*) the consignor is allowed by law to stop and resume possession of them, if he can succeed in doing so while they are on their way to the consignee, and before they have come into his actual or constructive possession.(*b*) In exercising this right, he is entitled, not only to countermand the delivery of the goods to the consignee, but also to demand their redelivery to himself.(*c*) This is called *stoppage in transitu.*(*a*)

"Stoppage *in transitu.*"

So late as 1690, this most important right was unknown to the law. It owes its existence entirely to the wisdom of great commercial lawyers, who presided over our courts of justice.(*d*)

It is of the essence of the doctrine of stoppage *in transitu*, that, during the transit, the goods should be in the custody of some third person intermediate between the consignor, who has parted with, and the consignee who has not yet acquired actual

Property in the goods not in the consignor who exercises right.

(*a*) See per Lord Northington: *D'Aquila* v. *Lambert*, 2 Eden, at p. 77.

(*b*) *Lickbarrow* v. *Mason*, 2 T. R. 63; 1 S. L. C., 9th ed. 737; *Bohtlingk* v. *Inglis*, 3 East, 381, 395; *The Tigress*, Brown. & Lush. 38; *Tucker* v. *Humphrey*, 4 Bing. 516.

(*c*) *The Tigress*, Brown. & Lush. 38.

(*d*) *Lickbarrow* v. *Mason*, 1 S.L.C. 737. This right was first recognised by the commissioners of the Great Seal in 1690: *Wisemann* v. *Vandeputt*, 2 Vern. 203. For the history of the right, see Lord Abinger's celebrated judgment in *Gibson* v. *Carruthers*, 8 M. & W. 337.

possession of them.(*e*) And further, the consignor's right to stop *in transitu* necessarily supposes, that the property in the goods is not in himself but in some other person; for so long as the entire property in goods belongs to any one, he has a right to the possession of them, whether they be *in transitu* or not, and has no need of the right of stoppage.(*f*)

Thus, where goods were consigned by a principal to a factor, who, having accepted bills drawn by the principal, and paid part of the freight after the goods arrived, became insolvent before the bills became due, and before the goods got into his actual possession, it was said, that the right of stoppage *in transitu* was out of the question, as such right could only be exercised between vendor and vendee, and no property had vested in the insolvent factor.(*g*) And so where goods have been shipped under such circumstances, as to show an intention that the property or right of possession shall not vest in the consignee, until some further act, such as payment or handing over the bill of lading, is done, although the consignor may have a right not to deliver the goods to the consignee before that act is done, this is not what is meant by a stoppage *in transitu*.(*h*) The consignor in such case has his remedy by action, if the goods are delivered before the performance of the condition.

Effect of stoppage on contract of sale.

What the effect of the exercise of this right on the contract of sale is, has been much discussed. Some eminent authorities have thought that it operates as a rescission of the contract, but the better opinion appears to be that it only entitles the vendor to hold the goods until the payment of the price, or of that part of it which remains unpaid,(*i*) and this view has been adopted in the United States.(*k*)

Who may Exercise the Right.

Unpaid vendor.

§ 371. Wherever goods have been consigned by way of sale, the consignor, who stands in the position of vendor of the goods,(*l*) and who has not been paid the whole (*m*) price of the goods, may

(*e*) Per Rolfe, B., *Gibson* v. *Carruthers*, 8 M. & W. 328; per Lord Chelmsford, *Schotsmans* v. *Lan. & York R. Co.*, L. R. 2 Ch. Ap. 335; *Ellis* v. *Hunt*, 3 T. R. 464.

(*f*) See *ex p. Ferd, Baller & Co. re O'Sullivan*, 66 L. T. 619; 67 *ib.* 464.

(*g*) *Kinloch* v. *Craig*, 3 T. R. 786, in Dom. Proc.; *Wright* v. *Campbell*, 4 Burr. 2047. See also per Buller, J., *Lickbarrow* v. *Mason*, 1 S. L. C. at p. 781; per Willes, J., *Bolton* v. *L. & Y. R.*, L. R. 1 C. P. at p. 439.

(*h*) 1 S. L. C. 9th ed. p. 811; and see *Turner* v. *Liverpool Docks*, 6 Ex. 543; *Falk* v. *Fletcher*, 18 C. B. N. S. 403; *Shepherd* v. *Harrison*, L. R. 4 Q. B. 493; 5 H. L. 116.

(*i*) See per Cairns, L.J., *Schotsmans* v. *Lanc. & York. R. Co.*, L. R. 2 Ch. 340; notes to *Lickbarrow* v. *Mason*, 1 S. L. C., 9th ed., 795, and cases there cited; Benjamin on Sale, 4th ed. 878 *et seq.*

(*k*) Benjamin on Sale, 4th ed. 901; *Cross* v. *O'Donnell*, 44 N. Y. Rep. 661.

(*l*) Kent's Com. II. 542; *Lickbarrow* v. *Mason*, 1 S. L. C. 9th ed. 737, and notes thereto, see p. 799; Blackburn on Sales, 2nd ed. 320.

(*m*) *Hodgson* v. *Loy*, 7 T. R. 440; per Parke, B., *Van Casteel* v. *Booker*, 2 Ex. 702.

exercise this right, when circumstances justify his doing so. And although the bill of lading is drawn to the order of the consignee, or has been indorsed to him by the consignor, the latter may still exercise the right, while the bill of lading is in the hands of the original consignee unindorsed.(*n*)

The vendor's right of stoppage on the insolvency of the purchaser is not affected by the fact that what he has sold is only an interest in and a right to receive a certain portion of the cargo, to be afterwards ascertained and appropriated to the parties intended;(*o*) nor by the fact that he is an alien enemy who has shipped a cargo to a British merchant under a British licence, for the licence gives legality to all the consequences of the sale and to the employment by the vendor of an agent in this country.(*p*)

Unpaid consignor on commission.

So an unpaid consignor in England, who has purchased and shipped goods for his correspondent abroad, charging a commission on the price, may stop them *in transitu*, if this correspondent become insolvent, before he has obtained possession of the goods.(*q*) And on the same principle a person abroad, who in pursuance of orders sent him by a British merchant purchases goods on his own credit, and charges a commission on the price, and ships "on account and risk" of the merchant, is entitled to stop the goods, if the merchant fail while they are on their passage.(*r*) Indeed it has been said that the legal effect of the transaction between the commission merchant and the consignee is a contract of sale; and that consequently the former is a vendor, and has the right of one as to stoppage *in transitu*.(*s*)

Consignor jointly interested with consignee.

§ 372. On the same principle a person, who consigns goods to be sold on the joint account of himself and the consignee, is also entitled to exercise this right on the failure of the latter.(*t*) And it seems that if goods are sold and forwarded to the agent of an insolvent consignee, and the former has made himself responsible for the price, he may stop them, whilst *in transitu* to such consignee.(*u*)

But not in general mere surety.

But a person, who has a mere lien on the goods, which he loses by parting with the possession of them, cannot exercise this right.(*x*) And it has been held that a mere surety for the price of the goods has no right to stop them.(*y*)

(*n*) *Brindley* v. *Cilgwyn, &c., Co.*, 55 L. J. Q. B. 67; per Dr. Lushington, *The Tigress*, B. & L. 44; *Schotsmans* v. *The Lanc. & York. R.*, L. R. 2 Ch., per Lord Chelmsford, C. at p. 337; *Tucker* v. *Humphrey*, per Park, J., 4 Bing. 522.

(*o*) *Jenkyns* v. *Usborne*, 7 M. & G. 678, 698.

(*p*) *Fenton* v. *Pearson*, 15 East, 419.

(*q*) Per Lawrence, J., *Feise* v. *Wray*, 3 East, 101.

(*r*) *Feise* v. *Wray*, 3 East, 93; *D'Aquila* v. *Lambert*, 2 Eden, 75.

(*s*) Per Blackburn, J., and Lord Chelmsford, *Ireland* v. *Livingston*, L. R. 5 H. L. 409, 416.

(*t*) *Newsom* v. *Thornton*, 6 East, 17.

(*u*) *Hawkes* v. *Dunn*, 1 Cr. & J. 519.

(*x*) *Sweet* v. *Pym*, 1 East, 4.

(*y*) *Siffken* v. *Wray*, 6 East, 371.

Surety discharging liability entitled to assignment of all creditor's securities.

If, however, while the goods were *in transitu* a surety for an insolvent vendee should pay the vendor, it seems that he would now have the right to stop, if not in his own name, at all events in the name of his vendor, by virtue of the "Mercantile Law Amendment Act,"(z) which provides, that "every person, who being surety for the debt or duty, of another, or being liable with another for any debt or duty, shall pay such debt, or perform such duty, shall be entitled . . . . *to stand in the place of the creditor* and *to use all the remedies,* and if need be, and upon a proper indemnity, to use the name of the creditor, in any action or other proceeding at law, or in equity, in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, &c."

Agent.

§ 373. As the act of a duly authorised agent is regarded in law as the act of his principal, an agent of the consignor may stop the goods on behalf of consignor, if the agent has a general authority from the consignor to act for him.(a) And an agent to whom the consignor has indorsed and forwarded the bill of lading, with directions to take possession of the goods, may stop in his own name, whilst the goods are on their way to the consignee.(b)

In *Hutchings* v. *Nunes*,(c) the defendant, after the consignee had become insolvent and after an official assignee had been appointed, stopped the goods in the name of the consignors and obtained possession of them, without having any specific authority for that purpose, although there was evidence of a general authority in the defendant to act for the consignors. The latter, who had been apprized of the insolvency, *before* the arrival of the goods, sent to the defendant a letter and power of attorney to do whatever was necessary for their interests in the matter of the consignment of the goods. This letter and power, however, were not received by the agent until 14 days *after* he had obtained possession of the goods. In an action of trover brought by the official assignee against the agent, the Privy Council held, that it was a rightful, valid, and effectual stoppage *in transitu.* The grounds of the judgment seem to be first, that there was sufficient evidence of a general agency and, secondly, that the letter and power of attorney ratified the defendant's act.

Stranger if stoppage ratified in time.

A stranger may interfere on behalf of the consignor and stop, if his agency is adopted and ratified by the consignor, while the transit continues, at a time and under circumstances, in

(z) 19 & 20 Vict. c. 97 s. 5; cp. *Imperial Bank* v. *London, &c., Dock Co.*, 5 Ch. D. 195; 1 S. L. C. (9th ed.), 799.

(a) See per Parke, B., *Whitehead* v. *Anderson*, 9 M. & W. 533; *Fraser* v. *Witt*, L. R. 7 Eq. 64.

(b) *Morison* v. *Gray*, 2 Bing. 260.

(c) 1 Moo. P. C. N. S. 243.

which the ratifying party might himself have lawfully done the act which he ratifies.(*d*) But if the stoppage is effected by a person, who, at the time when he effects it, has no authority to interfere, a ratification of his acts by the consignor, after the goods have reached the port of destination, and after the consignee or his assignees have demanded the goods and tendered the amount of the freight, is too late to render the stoppage valid.(*e*)

Under what circumstances the Right of Stoppage may be exercised.

§ 374. To entitle the consignor to exercise this right of stoppage *in transitu*, the following conditions must be fulfilled:—

1. The consignor must be wholly or partially unpaid.
2. The consignee must have become insolvent, or have so failed in circumstances, as to be unable to perform his part of the contract.
3. The master must be the agent to forward and not to receive and keep the goods.

1. Consignor must be wholly or partially unpaid.

§ 375. The consignor may exercise this right in those cases in which, either the whole or part of the price of the goods remains unpaid,(*f*) but not otherwise.(*g*) And inasmuch as payment to an agent is payment to his principal,(*h*) the right can no longer be exercised if the consignee has paid the duly authorised agent of the consignor for the goods, even though the agent has not paid over the money to the consignor, because payment to such an agent is payment to the consignor.

Effect of payment by bill.

But the consignor may exercise the right, where the goods were sold on credit, which has not expired, and where, therefore, the price has not become due,(*i*) or where he has received bills of exchange, or other securities for the full price of the goods, although the bills have been negotiated and transferred, and are still outstanding and not due, and although neither the bills nor the securities have been tendered back.(*k*) And *a fortiori*, he may do so, if the bills have arrived at maturity and been dishonoured.

If, however, it is clear, that the consignor has taken bills or notes in absolute payment for the goods and has assented, that

(*d*) *Bird* v. *Brown*, 4 Ex. 786, 797; *Bartram* v. *Farebrother*, 2 Bing. 579.

(*e*) *Bird* v. *Brown*, 4 Ex. 786; see per Bovill, C.J., *Ainsworth* v. *Creeke*, L. R. 4 C. P. 486; *Siffken* v. *Wray*, 6 East, 371.

(*f*) *Hodgson* v. *Loy*, 7 T. R. 440; *Feise* v. *Wray*, 3 East, 93; *Edwards* v. *Brewer*, 2 M. & W. 375, 378.

(*g*) Per Cur., *Kinloch* v. *Craig*, 3 T. R. at p. 122; *Merchant Banking Co.* v. *Phœnix Bessemer Steel Co.*, 5 Ch. D. 205.

(*h*) *Bunney* v. *Poyntz*, 4 B. & Ad. 568; *Coates* v. *Lewis*, 1 Camp. 444; Story on Agency, § 429.

(*i*) Per Bayley, J., *Bloxam* v. *Sandars*, 4 B. & C. 948; 1 S. L. C., 9th ed. 795.

(*k*) *Feise* v. *Wray*, 3 East, 93; *Edwards* v. *Brewer*, 2 M. & W. 375; *Miles* v. *Gorton*, 2 Cr. & M. 504; *Kinloch* v. *Craig*, 3 T. R. 119, 783.

such bills or notes shall operate as immediate payment, then, in such cases, the right of stoppage would seem to be at an end, for the consignor would be paid. In such cases, he must seek his remedy on the bills or notes, having no further right on the goods.(*l*)

In *Cowasjee* v. *Thompson*, the consignors contracted to sell goods to the consignees and deliver them "free on board," to be paid for by cash or bills, at the option of the consignees, and they were so delivered on board a vessel indicated by, but not belonging to, the consignees, and receipts were taken from the mate by the lighterman employed by the consignors and were handed over to them. The consignees elected to pay by bill, which was accordingly drawn by the consignor and accepted by the consignees, who became insolvent, while the bill was running, and while the goods were still on board. By the custom of the port the phrase "free on board" imported that the consignee was considered the shipper, though the seller was to bear the expense of shipment. It was held by the Privy Council that the transit was at an end, and the right of stoppage was gone as soon as the goods were on board and the bill given for the price.(*m*)

Mutual accounts between consignor and consignee.

§ 376. If there are mutual accounts between the consignor and consignee, which have not been adjusted, and the balance is uncertain, the consignor may, if the consignee becomes insolvent, exercise his right of stoppage, and need not wait until the mutual accounts are adjusted.(*n*) But if the consignor is indebted to the consignee, on a balance of accounts or for money borrowed, and consigns goods to the consignee *on account of this balance*, then such a consignor is not an unpaid consignor, and therefore cannot exercise the right of stoppage.(*o*)

In *Vertue* v. *Jewell*,(*p*) it was held by Lord Ellenborough and confirmed by the Court in Banc, that a consignor, who, being indebted to the consignee on a balance of accounts, in which balance were included acceptances of the consignee outstanding and not yet mature, shipped goods on account of, but of a less value than that balance, had no right of stoppage on the insolvency of the consignee, although the acceptances were dishonoured,

(*l*) 1 S. L. C. 9th ed. 799.

(*m*) 5 Moore, P. C. C. 165; see 1 S. L. C. p. 802, where a doubt is expressed whether this case is good law. It is difficult to understand this case. In the statement of facts, in the beginning of the report of this case, it is said, that it was in the option of the *consignees* to give money or a bill; but in the judgment, it is stated, that the option was in the *consignors*. The real justification of the decision would seem to be, that the giving of the bill was, under the circumstances, agreed to be taken as payment.

(*n*) *Wood* v. *Jones*, 7 D. & R. 126.

(*o*) *Vertue* v. *Jewell*, 4 Camp. 31.

(*p*) 4 Camp. 31; this is, to say the least, very questionable law. See *Feise* v. *Wray*, 3 East, 93, and cases cited note (*k*) *supra;* Benjamin on Sales, 4th ed. 849, 850, and per Lord Ellenborough, C.J., *Patten* v. *Thompson*, 5 M. & S. at p. 360.

and the consignee was on his insolvency indebted to the consignor in much more than the value of the goods.

It would seem, that, on principle, the right of stoppage should be divested only if, after deducting the unpaid acceptance of the insolvent consignee, the consignor still remained indebted to the consignee to the full value of the goods consigned, and so was not an unpaid consignor on the insolvency of the consignee.

2. Consignee must have become insolvent.

§ 377. The consignor cannot exercise this right, unless the consignee has become insolvent, while the goods are on their way and before they have actually come into his possession actual or constructive.(*q*)

It is not, however, necessary that the consignee should have been actually adjudicated a bankrupt, in order to justify the consignor in exercising this right. The consignor will be justified in stopping the goods, if he can show that, at the time when he stopped them, the consignee was in embarrassed circumstances and likely to become a bankrupt,(*r*) or that there was a general inability on the part of the consignee to pay his debts.(*s*)

If the consignor stop the goods, where the consignee has not become insolvent, he does so at his peril. If, on the arrival of the goods at their destination, the consignee is then insolvent, the premature stoppage will avail for the protection of the consignor; but if the consignee remains solvent, the consignor will be bound to deliver the goods with an indemnification for expenses incurred.(*t*)

3. Goods must be in the hands of a third person as agent to forward.

§ 378. It is an essential condition to the existence of the right of stoppage *in transitu*, that the goods should be at the time of the stoppage in the possession of a middleman, or of some person intervening between the vendor, who has parted with, and the purchaser, who has not yet received them.(*u*)

They are deemed to be in transit and to be liable to stoppage *in transitu*, as long as they remain in the possession of the master or carrier, as *carrier, or agent to forward*.(*x*)

(*q*) See per Sir Wm. Scott, *The Constantia*, 6 C. Rob. 321, 326; *Wilmshurst* v. *Bowker*, 2 M. & Gr. 792, 812; 7 *ibid.* 882.

(*r*) Per Lord Hardwicke, C., *Snee* v. *Prescot*, 1 Atkyns, 248-9; *The Constantia*, 6 C. Rob. at p. 326.

(*s*) See *Parker* v. *Gossage*, 2 C. M. & R. 617, 620; *Biddlecomb* v. *Bond*, 4 Ad. & El. 332; Smith's Merc. Law, 10th ed. 684. In *The Tigress*, Brown. & Lush. 45, Dr. Lushington says, "whether the vendee is insolvent may not transpire till afterwards (*i.e.*, after the stoppage), when the bill of exchange for the goods becomes due; for it is, as I conceive, clear law that the right to stop does not require the vendee to have been *found insolvent*."

(*t*) *The Constantia*, 6 C. Rob. 321, 326.

(*u*) *Schotsmans* v. *The L. & Y. R.*, 2 Ch. 332; per Lord Chelmsford, at p. 335; per Cairns, L.J., at p. 338.

(*x*) *Bohtlingk* v. *Inglis*, 3 East, pp. 395, 396; per Parke, B., *James* v. *Griffin*, 2 M. & W. 633; notes to *Lickbarrow* v. *Mason*, 1 S. L. C. 9th ed. 800; per Lord Esher, M.R., *Bethell* v. *Clark*, 20 Q. B. D. at p. 617; per the Judicial Committee, *Lyons* v. *Hoffnung*, 15 Ap. Ca. at p. 397.

The question, therefore, for determining whether the transitus is ended, is—has the master, or person, who has the custody of the goods, got possession of them, as an agent *to forward* them from the consignor to the consignee, or as an agent *to hold* them for the consignee?

Master in general is agent to forward.

The master is regarded as the servant of the shipowner and as a mere carrier and agent to forward the goods,(*y*) and not as the agent of the consignee to receive and keep them for him, except in those cases, where the ship into which the goods are delivered is the consignee's own ship, or is demised to him for a term, he finding stock and provisions, and paying the master;—or where the master has duly and within his authority, consented to hold the goods for the consignee as his agent to keep them.

Unless the facts bring the case within one of the last-mentioned cases, then, even where the goods are shipped by the agents of the consignee on board a ship chartered by him, and bills of lading are signed by the master deliverable to the consignee or his assigns, still, the master is regarded as the agent to forward, and the transit, and the right of the unpaid consignor to stop, continue until the goods have arrived at their destination and have been delivered according to the bills of lading,(*z*) and it makes no difference that that destination has not been communicated by the consignee to the consignor.(*a*)

Delivery into consignee's own ship determines transit.

§ 379. But if the ship into which the consignor delivers the goods is the consignee's own ship, the delivery into such a ship at once puts an end to the right of stoppage, unless the consignor keeps it alive by special terms, restraining the effect of such a delivery; for such a delivery is deemed to be a final delivery at the place of destination and to the consignee himself, just the same as if they had been put into the consignee's own cart.(*b*) And this is so, whether the consignee's ship was expressly sent for the goods, or was a general ship belonging to the consignee, and the goods were put on board without any previous special arrangement.(*c*) But if the consignor were ignorant that the ship belonged to the consignee, it would seem to be doubtful whether the delivery could properly be held to be complete, so as to put an end to the right of stoppage *in transitu*.(*d*)

(*y*) *Bohtlingk* v. *Inglis*, 3 East, 381, 395.

(*z*) *Rodger* v. *The Comptoir, &c.*, L. R. 2 P. C. 393; *Berndtson* v. *Strang*, L. R. 4 Eq. 481; L. R. 3 Ch. 588; see however *Cowasjee* v. *Thompson*, 5 Moo. P. C. C. 165; *supra* § 375, and note (*m*).

(*a*) *Ex p. Rosevear, &c., Co., re Cock*, 11 Ch. D. 560.

(*b*) Per Cur., *Van Casteel* v. *Booker*, 2 Ex. 691; *Schotsmans* v. *Lanc. & York. R.*, L. R. 2 Ch. Ap. 332; per Patteson, J., *Turner* v. *Trustees of Liverpool Docks*, 6 Ex. 567; per Wood, V.C., *Berndtson* v. *Strang*, L. R. 4 Eq. 488; and see *Ogle* v. *Atkinson*, 5 Taunt. 759.

(*c*) *Schotsmans* v. *The Lanc. & York. R.*, L. R. 2 Ch. 332.

(*d*) *Ibid.*, per Lord Chelmsford, C., at p. 335.

Or into ship demised to consignee.

In some cases, a vessel chartered by the consignee is considered as his own ship, so far as the effect of delivery on such ship upon the right of stoppage is concerned.

This depends on the nature of the charter-party. If the charterer is, in the language of the law merchant, owner for the voyage—that is, if the ship has been demised to him for a term, and he is to find stock and provisions for the ship, and to pay the master and to have the entire disposition of the ship during the term—a delivery on board her would be a delivery to the consignee;(*e*) but if the owner of the vessel has his own master and men on board, so that the master is the servant of the owner, and the effect of the charter is merely to secure to the charterer the exclusive use and employment of the vessel, a delivery of goods on board is a delivery not to the consignee, but to an agent to carry and forward.(*f*) It is a pure question of intention in every case, to be determined by the terms of the charter-party.(*g*)

But right of stoppage may be preserved by express terms, or by bill of lading to vendor's order.

§ 380. A consignor, however, who delivers the goods into the consignee's own ship may restrain the effect of the delivery and preserve the right of stoppage, by stipulating that the master, in taking delivery, shall be deemed to be an agent for carriage and not an agent of the consignee to receive and keep possession for him; or he may reserve a right of disposing of the goods, either by indorsing a condition on the bill of lading before delivering it to the consignee or his agent,(*h*) or by taking from the master bills of lading making the goods deliverable to consignor's order,(*i*) and that, even though the master has no specified authority to sign such bills, and although the bills show that the goods are free of freight, being owners' property.(*k*) In such a case, the right of stoppage *in transitu* is preserved to the consignor until the bill of lading has been indorsed by the consignor and has come into the possession of the indorsee.(*l*)

By mate's receipt.

And it seems that, where goods are delivered on *consignee's own ship*, the consignor may retain his property in and his right over the goods, by his lighterman taking a receipt for them from the person in charge of the ship, as received for and on account of the consignor, so long as the latter keeps this receipt in his own hands; the shipment under such circumstances not being a

(*e*) See per Lawrence, J., *Bohtlingk* v. *Inglis*, 3 East, at p. 396; *Fowler* v. *Kymer* (or *McTaggart*), cited 3 East, 396.

(*f*) See § 378 *supra*.

(*g*) *Sandeman* v. *Scurr*, L. R. 2 Q. B. 86, 96; and see § 301 *supra*.

(*h*) *Mitchel* v. *Ede*, 11 Ad. & El. 888.

(*i*) *Schotsmans* v. *Lanc. and York R. Co.*, L. R. 2 Ch. at pp. 336, 337; *Van Casteel* v. *Booker*, 2 Ex. 699; *Turner* v. *Trustees of Liverpool Docks*, 6 Ex. 543; *Berndtson* v. *Strang*, L. R. 4 Eq. at pp. 488, 491; and see *Wait* v. *Baker*, 2 Ex. 1.

(*k*) *Turner* v. *Trustees of Liverpool Docks*, 6 Ex. 543; Benjamin on Sale, 4th ed. 855.

(*l*) *Van Casteel* v. *Booker*, 2 Ex. 709.

complete delivery to the consignee, and the master's duty being to give a bill of lading of the goods only in exchange for the lighterman's note.(*m*)

And the consignor will also retain his right to the goods, at least against the master of the ship, if he demand a receipt in his own name at the time of the shipment, even although the receipt be not delivered, and even although the master afterwards sign and deliver a bill of lading to the consignee, who becomes insolvent before the departure of the ship, for the master ought not to have signed bills of lading except in exchange for a receipt so demanded.(*n*)

But such bill of lading obtained by fraud will not preserve right.

But, if the goods have once been delivered on the consignee's own ship, without any terms restricting the effect of such delivery, the effect of such delivery will not be restricted by the consignor afterwards obtaining by fraud from the master a bill of lading, which makes the goods deliverable to the consignor's order.(*o*)

When master holds as warehouseman for consignee, no right to stop.

§ 381. There is no doubt that the master or carrier may, and often does, cease to be an agent to forward, and become, so to speak, a warehouseman for the consignee; but that must be by virtue of some contract or course of dealing between them, that, when the goods have arrived at their destination, the character of carrier shall end and that of warehouseman or agent to keep take its place.(*p*)

If, where the master is not restrained by the terms of the bill of lading or otherwise, he enters, either expressly or by implication, into a contract with the consignee, distinct from the original contract for carriage—viz., to hold the goods for the consignee as his agent, not for the purpose of expediting the goods to the place of original destination, pursuant to the original contract, but for the purpose of keeping and holding the goods on account of the consignee, until some new order is received from him—the master is no longer the agent to forward, but the goods have in such case come into the constructive possession of the consignee, and the transit and right of stoppage are at an end.(*q*) But in order to put an end to the transitus and right to stop two things must concur—an intention on the part of the master and an intention on the part of the consignee that the former shall hold the goods for the latter, as warehouseman, and not as agent to forward. The master or carrier cannot of his own will convert himself into a warehouseman, or an agent to receive and keep,

(*m*) *Craven* v. *Ryder*, 6 Taunt. 433, 435.

(*n*) *Ruck* v. *Hatfield*, 5 B. & A. 632.

(*o*) *Ogle* v. *Atkinson*, 5 Taunt. 759.

(*p*) *Bolton* v. *Lanc. and York. R.*, L. R. 1 C. P. 431, 438; *Whitehead* v. *Anderson*, 9 M. & W. 518; *Coventry* v. *Gladstone*, L. R. 6 Eq. 44; *Foster* v. *Frampton*, 6 B. & C. 107; *Ex p. Barrow, re Worsdell*, 6 Ch. D. 783; *Ex p. Cooper, re McLaren*, 11 Ch. D. 68.

(*q*) See per Parke, B., 9 M. & W. 534; *Wentworth* v. *Outhwaite*, 10 M. & W. 436.

so as to terminate the transitus, without the agreeing mind of the consignee;(r) nor can the consignee change the capacity in which the master or carrier holds possession without his assent, at least until the carrier has no right whatsoever to retain possession against the buyer.(s)

The master must be the agent to forward the goods.

In *Coventry* v. *Gladstone*,(t) goods were shipped by A. at Calcutta to the order of B. in England. B. pledged the bill of lading to C., and afterwards became bankrupt. Afterwards, the ship in which the goods were arrived in the Thames. C. paid the freight, and received from the shipbrokers an over-side order for delivery of the goods. This order was presented to the chief officer in charge of the ship by C.'s lighterman, and he was told by the officer that the goods should be delivered to him as soon as they could be got at. It was held that such a qualified promise did not transfer the actual or constructive possession of the goods to C., so as to put an end to the right to stop.

In what manner the Right may be exercised.

How the stoppage may be effected.

§ 382. The mere insolvency of the consignee, however complete it may be, will not of itself alone operate as a stoppage *in transitu*;(u) but no particular form or mode of stoppage is necessary.

Notice is sufficient.

All that is necessary, in order to entitle the consignor to the benefit resulting from a stoppage, and to entitle him to recover the possession of his goods, is that he or his duly authorised agent should give a notice to the carrier, or master, or shipowner, stating the consignor's claim, forbidding delivery to the consignee, and requiring that the goods shall be held subject to the consignor's orders.(x) And it is not necessary for the consignor to obtain actual possession of the goods in order to legally entitle him to the benefits arising from a stoppage. The notice alone is quite sufficient.(y)

Entry by the consignor.

It seems to have been decided (z) that an entry of the goods at the Custom-House by the consignor, on the arrival of the vessel, was a valid stoppage as against the assignees of the bankrupt consignee, who afterwards got forcible possession of the goods when landed.

(r) See *James* v. *Griffin*, 2 M. & W. 623.

(s) Blackburn on Sales, 2nd ed. p. 364; *Jackson* v. *Nichol*, 5 Bing. N. C. 508, 519; *Whitehead* v. *Anderson*, 9 M. & W. 518, 535; *Coventry* v. *Gladstone*, L. R. 6 Eq. 44.

(t) L. R. 6 Eq. 44; see also *Ex parte Cooper, re McLaren*, 11 Ch. D. 68; *infra* § 394.

(u) *Ellis* v. *Hunt*, 3 T. R. 464, 467; *Scott* v. *Pettit*, 3 B. & P. 469, 471.

(x) *The Tigress*, per Dr. Lushington, B. & L. 44; *Litt* v. *Cowley*, 7 Taunt. 169, 170; *Whitehead* v. *Anderson*, 9 M. & W. 518, 532. A notice to "hold the proceeds" of the goods is insufficient, *Phelps* v. *Comber*, 29 Ch. D. 813.

(y) *Northey* v. *Field*, 2 Esp. 613; *Litt* v. *Cowley*, 7 Taunt. 169; *Mills* v. *Ball*, 2 B. & P. 457, 461.

(z) *Ex parte Walker and Woodbridge*, cited in Cooke's Bankrupt Law, 402.

To whom and when notice must be given.

§ 383. But, in order that a notice to stop *in transitu* may be effectual to divest the right of the consignee to require delivery of the goods and prevent its passing to his trustee in bankruptcy, it must be given either to the master or person who has the actual custody of the goods, while they are under his control; or to the principal, whose servant has the custody at such a time, and under such circumstances, as to enable him, by the exercise of reasonable diligence, to communicate it to his servant in time to prevent delivery to the consignee.(*a*)

It would be unjust to hold, that a notice to a shipowner at a distance would be sufficient to render him liable for failure to comply with it, when it is impossible, from the distance and from the want of means of communication, for the owner to prevent the delivery.(*b*) Thus, in *Whitehead* v. *Anderson*,(*c*) a consignee in Liverpool ordered goods from a consignor at Quebec, who sent them on a ship belonging to a shipowner at Montrose, to be delivered at Port Fleetwood, in Lancashire. The price was not paid; and, before the arrival of the ship at Fleetwood, the consignee became bankrupt. Thereupon, the agents of the consignor gave notice on behalf of the consignor to the shipowner at Montrose to stop the delivery. The shipowner thereupon wrote to the master, directing him to hold the cargo at the disposal of the agents of the consignor, and posted the letter to await the arrival of the vessel at Fleetwood. On the day on which the vessel arrived there, before the receipt of the letter, the assignees in bankruptcy of the consignee went on board to take possession of the goods. And it was held, that assuming that the assignees actually took possession, the notice to the shipowner was not a sufficient stoppage *in transitu*.(*c*)

Stoppage by arrangement with the consignee.

It seems that a notice addressed to the consignee and not to the person in charge of the goods, would in any circumstances be ineffectual.(*d*) And it was at one time held that a stoppage *in transitu* "should be done adversely to the vendee," and that if the agent of the consignor obtained possession of the goods from the insolvent consignee, under an amicable agreement with him, such possession of the agent would not of itself be effectual as a stoppage *in transitu*.(*e*) But later decisions do not seem reconcilable with this proposition.(*f*)

(*a*) *Whitehead* v. *Anderson*, 9 M. & W. 518.

(*b*) Per Parke, B., *Whitehead* v. *Anderson*, 9 M. & W. at p. 534.

(*c*) 9 M. & W. 518.

(*d*) *Phelps* v. *Comber*, 29 Ch. D. 813.

(*e*) *Siffken* v. *Wray*, 6 East, 371.

(*f*) *Bartram* v. *Farebrother*, 4 Bing. 579; *Nicholls* v. *Le Feuvre*, 2 Bing. N. C. 81; *James* v. *Griffin*, 1 M. & W. 20; 2 *ib.* 623; *Ex p. Cooper, re McLaren*, 11 Ch. D. 68. Such an act on the part of the consignee may, however, it seems, amount to a fraudulent preference; as to which, see *ex parte Ferd, Baller & Co., re O'Sullivan*, 66 L. T. 619; 67 *ibid.* 464, where the consignee, after insolvency, returned the bill of lading to the consignor, who thereupon gave notice to stop. The Court below differed as to the

A Court of Equity will not restrain by injunction the sailing of a general ship, which contains goods sold to a consignee, who has become insolvent, in order to enable the consignor to obtain possession of those goods, as this course would be so highly inconvenient to the other shippers by the same vessel; but will leave the consignor to his remedy at law, in case of the goods being improperly delivered to the consignee after notice to stop.(*g*) This remedy can be enforced, and the value of the goods be recovered, either, as we have seen(*h*) against the master himself or his owners, or against the trustees in bankruptcy of the insolvent consignee.(*i*)

How long the Transit and the Right to Stop continue.

General rule. Transit determined until goods come into possession of consignee or his trustee in bankruptcy.

§ 384. The transit and the right of stoppage, if the latter has not been put an end to in one of the ways explained hereafter,(*k*) continue either until the goods have arrived at their destination,(*l*) and the consignee, or, in case of his bankruptcy, his trustee, has demanded them of the master and tendered the amount of freight which is due for them;(*m*) or, until they have been actually delivered to the consignee, or his trustee,(*m*) or to some one, whom he has appointed as his agent to take possession of the goods and keep them for him, either finally or subject to his further orders.(*n*)

Or, to state the rule in shorter terms, the transit continues, until the goods have arrived at the actual or constructive possession of the consignee,(*o*) or, in case of his bankruptcy, at that of his trustee.(*p*)

By arrival of goods at destination and demand by consignee, or his trustee in bankruptcy.

§ 385. If no notice to stop has been given previously, the transit and the right to stop are at an end, when the goods have reached the port of destination, and the consignee or his trustee has demanded the goods and produced the bill of lading, and tendered the amount of the freight for which the shipowner has a lien, and been ready to take possession of them; for the master is not allowed by his wrongful detainer of the goods, or by delivering them over to other parties, to prolong the transit, or to extend the period during which the right of stoppage may be exercised.(*q*)

efficacy of the notice. The C. A. negatived fraudulent preference, and upheld the stoppage *in transitu*.

(*g*) *Goodhart* v. *Lowe*, 2 Jac. & W. 349; Abbott, 13th ed. p. 670.

(*h*) *Supra* § 322.

(*i*) See, for example, *Litt* v. *Cowley*, 7 Taunt. 169; *Kemp* v. *Falk*, 7 Ap. Ca. 573 (affg. *Ex parte Falk, re Kiell*, 14 Ch. D. 446); *Ex parte Watson, re Love*, 5 Ch. D. 35.

(*k*) *Infra* §§ 395–399.

(*l*) As to what is "the place of destination," see *infra* § 389.

(*m*) *Bird* v. *Brown*, 4 Ex. 786.

(*n*) Per Parke, B., *James* v. *Griffin*, 2 M. & W. at p. 632; *Dixon* v. *Baldwen*, 5 East, 175, 184; and see cases cited *infra* § 391.

(*o*) Per Tindal, C.J., *Jackson* v. *Nichol*, 5 Bing. N. C. 516.

(*p*) *Bird* v. *Brown*, 4 Ex. 786.

(*q*) Per Rolfe, B., *Bird* v. *Brown*, 4 Ex. 786, 797, per Lawrence, J., *Bohtlingk* v. *Inglis*, 3 East, 381, 394.

So the transit and the right of stoppage are put an end to, if, even after the bankruptcy of the consignee, the goods are delivered into his warehouse, or his trustee takes possession of them, for the bankruptcy is no rescission of the contract, and the trustee is clothed with the rights of the bankrupt.(*s*)

Arrival without demand or possession insufficient.

But the mere arrival of the goods at their place of destination will not determine the transit and the right to stop. And even although they are actually landed at the place to which they are destined, they are still in transit, until the consignee has either demanded possession and tendered the bill of lading and the freight, or has received possession of the goods.(*t*) On this principle where the carrier, having reached the consignee's premises, began unloading and put a part of the goods on the consignee's wharf, but hearing that the consignee had absconded and become bankrupt, took them back again on board the barge, it was held, that the right of stoppage remained, and that there had been no delivery of any part of the goods.(*u*)

And so the transit is not at an end, if the consignee receive the goods into the warehouse of his agent, not as owner, or to keep them, but for a limited purpose, as for the benefit of the consignor, to restore them to him.(*x*)

Constructive possession.

On the other hand, although delivery of the goods to the consignee's agent, who is authorised, not to *receive and keep*, as a warehouse-keeper, but only *to forward*, does not, in general, put an end to the transit, or to the right of stoppage;(*y*) still their arrival at a place where they are to be at the orders of the consignee in the hands of persons who are to keep them for him, is an end of the transit, although the place be not that of their ultimate destination.(*z*)

Possession by consignee before completion of voyage determines transit.

§ 386. It was at one time held that completion of the voyage was necessary to divest the consignor's right of stoppage, and that if the consignee obtained possession of the goods before that time, the consignor would still have his right of stoppage.(*a*) But this doctrine has been overruled, and the law now is, that if the consignee, before the goods reach their ultimate destination,

(*s*) *Ellis* v. *Hunt*, 3 T. R. 464; *Scott* v. *Pettit*, 3 B. & P. 469, 471; *Heinekey* v. *Earle*, 8 E. & B. 410.

(*t*) *James* v. *Griffin*, 1 M. & W. 20; 2 M. & W. 623; *Whitehead* v. *Anderson*, 9 M. & W. 518; per Lord Campbell, *Heinekey* v. *Earle*, 8 El. & Bl. 423; *Bolton* v. *L. & Y. R.*, L. R. 1 C. P. 431. So where goods are landed in the custody of Revenue officers for unpaid duties, *Northey* v. *Field*, 2 Esp. 613; or where they are attached by creditors of the consignee, *Smith* v. *Goss*, 1 Camp. 282.

(*u*) *Crawshay* v. *Eades*, 1 B. & C. 181.

(*x*) *James* v. *Griffin*, 2 M. & W. 623.

(*y*) Per Parke, B., *James* v. *Griffin*, 1 M. & W. 25; *Jackson* v. *Nichol*, 5 Bing. N. C. 508; *Smith* v. *Goss*, 1 Camp. 282; *Coates* v. *Railton*, 6 B. & C. 422; *Nicholls* v. *Le Feuvre*, 2 Bing. N. C. 81; *Lyons* v. *Hoffnung*, 15 Ap. Ca. 391; and see § 392 *infra*.

(*z*) *Dixon* v. *Baldwen*, 5 East, 175; *Wentworth* v. *Outhwaite*, 10 M. & W. 436; *Dodson* v. *Wentworth*, 4 M. & G. 1080; and see cases cited *infra* § 391.

(*a*) *Holst* v. *Pownall*, 1 Esp. 240.

and before the consignor gives a notice to stop, take the goods, with the consent of the master or carrier, out of the possession of the master or carrier into his own, or do any act, which is equivalent to taking such possession of them, then the transit and right of stoppage are at an end.(*b*) And it has been said, that this is so, even where the consignee obtains such possession of the goods without the consent of the carrier or master.(*c*)

Mere demand does not.

But a mere demand of the goods, by the consignee, from the carrier or master, while they are on their journey or voyage, and before the voyage has been completely terminated, without any delivery or obtaining possession of the goods, does not determine the transit or the right to stop, even though the full freight be tendered when the demand is made.(*d*)

Right will not revive after possession by consignee.

When the goods have once come into the possession of the consignee, the right to stop will not be revived by their being re-delivered by the consignee to the consignor for a special purpose, as, for instance, in order that they may be repacked.(*e*)

What is such possession by consignee as determines transit.

§ 387. It remains to consider what acts have been decided to constitute such a taking of actual or constructive possession of the goods by the consignee, or his agent to keep, as to put an end to the transit and the right to stop.

And first it is to be observed that in order to put an end to the transit, the act of taking possession, whether it be done by the consignee himself, or by an agent, must amount to a taking possession by the consignee "*eo animo* as owner."

Possession must be taken with intention of ownership.

Therefore, where a consignee, at the request of the master, who was anxious to discharge his cargo, sent directions by his son to have the goods landed at a certain wharf, at which he had been accustomed to have goods landed, and kept until he took them away to customers in his own carts, and at the same time told his son that, as he was insolvent, he would not meddle with the goods, it was held that the landing and warehousing were not a taking possession by the consignee as owner and that the transit and the right of stoppage were not at an end.(*f*)

And so, in *Bolton* v. *L. and Y. Railway*, one Woolstencroft, of

(*b*) *Wright* v. *Lawes*, 4 Esp. 82; per Chambre, J., *Oppenheim* v. *Russell*, 3 B. & P. at p. 54; *Jackson* v. *Nichol*, 5 Bing. N. C. 508, 519; *Allan* v. *Gripper*, 2 Cr. & J. 218; *Foster* v. *Frampton*, 6 B. & C. 107; *James* v. *Griffin*, 2 M. & W. 623, 633; *Whitehead* v. *Anderson*, 9 M. & W. 518, 534; 1 S. L. C. 9th ed. 806. The carrier may deliver the goods at any place agreed between him and the consignee without breach of duty to the consignor; *L. & N. W. R.* v. *Bartlett*, 7 H. & N. 400.

(*c*) Per Parke, B., *Whitehead* v. *Anderson*, 9 M. & W. 518, 529, 534; but see Blackburn on Sale, 2nd ed. 375.

(*d*) Per Tindal, C.J., *Jackson* v. *Nichol*, 5 Bing. N. C. 508.

(*e*) *Valpy* v. *Gibson*, 4 C. B. 837; cp. *Ogle* v. *Atkinson*, 5 Taunt. 759, *supra*, § 380.

(*f*) *James* v. *Griffin*, 1 M. & W. 20; 2 M. & W. 623; and see *Mills* v. *Ball*, 2 B. & P. 457; *Edwards* v. *Brewer*, 2 M. & W. 375.

Consignor and consignee must have assented to it.

Manchester, sold to Parsons, of Brierfield, certain goods lying at the defendant's station at Salford, and sent the buyer an invoice and delivered part. Parsons then wrote refusing to take any more on account of alleged bad quality. Woolstencroft, on the same day, ordered the defendants to deliver another portion of the goods to Parsons, and wrote to the latter that he had done so "according to your wish; the other four are lying at Salford awaiting your instructions." Parsons replied, returning the invoice and refusing to take any more of the goods. Woolstencroft then wrote demanding payment of all the goods undelivered, and sent an order to the defendants to deliver the rest of the goods to Parsons. Both Parsons and Woolstencroft refused to receive them. Parsons then became bankrupt, and the vendor then sent a stoppage order to the defendants, in whose hands the goods remained, and the goods were delivered to him. An action was thereupon brought against the defendants by the assignees of Parsons; but it was held, that the transitus was not at an end, and that the arrival at the hands of the vendee, which is to divest the right of stoppage, must be such that the vendee has taken actual or constructive possession of the goods, and that this cannot be as long as he repudiates them.(*g*)

Goods need not come to the corporal touch of consignee.

§ 388. In order to effect a transfer of the possession of the goods from the consignor to the consignee, it is not necessary that the goods should come to the actual corporal touch of the consignee.(*h*) There may be a delivery to, and a taking of possession by, the consignee, so as to put an end to the transit, without his even seeing them. As, for example, by delivery of the key of the warehouse where the goods are. All that is necessary is, that he exercise some act of ownership over the property.(*i*) And this he may do equally through an agent, or by his own hand.(*k*)

Touching, marking, or sampling the goods not alone sufficient.

On the other hand, it would seem, that the mere fact of the consignee or his agent marking, touching, or sampling the goods, or the like, while they are in the possession and custody of the master, or carrier, and without removing them from such possession or custody, although done as if with the intention of taking possession, would not give a constructive possession to the consignee, unless it was accompanied with such circumstances, as to denote, that the master or carrier was intended to keep, and assented to keep, the goods, as the consignee's agent for their safe custody.(*l*) Accordingly, where consignee's agent went on board

(*g*) *Bolton* v. *L. & Y. R.*, L. R. 1 C. P. 431.

(*h*) *Ellis* v. *Hunt*, 3 T. R. 464; *Dixon* v. *Baldwen*, per Lord Ellenborough, C.J., 5 East, 175, 184.

(*i*) Per Lord Kenyon, *Wright* v. *Lawes*, 4 Esp. 82, 85.

(*k*) See, *e.g.*, *Leeds* v. *Wright*, 3 B. & P. 320; *Scott* v. *Pettit*, *ibid.* 469.

(*l*) Per Parke, B., *Whitehead* v. *Anderson*, 9 M. & W. 518, 535; such circumstances existed in *Foster* v. *Frampton*, 6 B. & Cr. 107; see also *Ellis* v. *Hunt*, 3 T. R. 464; cp. *Nicholson* v. *Bower*,

for the purpose of taking possession, and touched the goods, but it did not appear whether by design or otherwise, and told the master that he had come to take possession, but the master did not consent to deliver immediate possession or to waive his lien for the freight, it was held there was no taking of possession, either actual or constructive, by the consignee.(*m*)

At what place transit ends.

§ 389. Actual delivery, such as to put an end to the transit, is in the absence of special circumstances,(*n*) complete when the goods have arrived "at the place which as between buyer and seller is the place of their destination,"(*o*) whether that be the consignee's own warehouse or ship,(*p*) or a place which, though belonging to another, he has been in the habit of using as his warehouse or as the place of deposit for his goods,(*q*) as for example the warehouse of the carriers employed by the consignee, where it has been the custom to receive his goods and to keep them, till he removed them ;(*r*) or a wharf or warehouse where goods shipped for the consignee have been usually landed and kept until sent for, or made the subject of further orders, by him,(*s*) or where, according to the arrangement between himself and the consignor, the goods are to be delivered and remain at the consignee's orders, though that may not be their ultimate destination.(*t*)

But the arrival of the ship with the goods on board at a port of call for orders, does not put an end to the transit, although the ultimate destination of the goods, as between vendor and vendee, may not be determined until such orders are received.(*u*)

Vendee commission agent: Vendor's rights unaffected.

The fact that the vendee is a commission agent, who is under contract to forward the goods to his principal as soon as they are delivered to him, does not extend the period of transit as between him and the vendor.(*x*)

Question whether original transit ended and new transit begun.

§ 390. Where, before the right of stoppage has been exercised, goods have reached an intermediate resting-place from which they have been, or must necessarily be, again put in motion to their ultimate destination, the question whether the original transit is

1 El. & El. 172 ; *Cooper* v. *Bill*, 3 H. & C. 722.

(*m*) *Whitehead* v. *Anderson*, 9 M. & W. 518.

(*n*) See *James* v. *Griffin*, 1 M. & W. 20 ; 2 *ib*. 623.

(*o*) Per Cockburn, C.J., *Smith* v. *Hudson*, 6 B. & S. 431 ; *Ex parte Miles, re Isaacs*, 15 Q. B. D. 39 ; *Kendal* v. *Marshall*, 11 Q. B. D. 356.

(*p*) See § 379 *supra*.

(*q*) *Scott* v. *Pettit*, 3 B. & P. 469.

(*r*) *Rowe* v. *Pickford*, 8 Taunt. 83 ; *Allan* v. *Gripper*, 2 Cr. & J. 218.

(*s*) *Richardson* v. *Goss*, 3 B. & P. 119 ; 1 S. L. C. 9th ed. 801 ; *Wentworth* v. *Outhwaite*, 10 M. & W. 436 ; *Dodson* v. *Wentworth*, 4 M. & Gr. 1080 ; *Smith* v. *Hudson*, 6 B. & S. 431.

(*t*) Per Parke, B., *James* v. *Griffin*, 2 M. & W. 633 ; *Dixon* v. *Baldwen*, 5 East, 175 ; *Ex parte Gibbes, re Whitworth*, 1 Ch. D. 101 ; *Merchant Banking Co.* v. *Phœnix, &c., Co.*, 5 Ch. D. 205 ; and see note (*o*) *sup*.

(*u*) *Fraser* v. *Witt*, L. R. 7 Eq. 64.

(*x*) *Ex parte Miles, re Isaacs*, 15 Q. B. D. 39 ; *Ex parte Francis, re Bruno*, 56 L. T. 577. Disting. *Coates* v. *Railton*, 6 B. & C. 422 ; commented on and explained in *Kendal* v. *Marshall*, 11 Q. B. D. 366, 369.

Whether original transit ended and new transit begun.

at an end, and a fresh transit begun, or in contemplation, is often a difficult one. In such cases "the way in which the question has been dealt with is this, where the transit is a transit which has been caused either by the terms of the contract, or by the directions of the purchaser to the vendor, the right of stoppage *in transitu* exists; but, if the goods are not in the hands of the carrier by reason either of the terms of the contract, or of the directions of the purchaser to the vendor, but are *in transitu* afterwards in consequence of fresh directions given by the purchaser for a new transit, then such transit is no part of the original transit, and the right to stop is gone. So also, if the purchaser gives orders that the goods shall be sent to a particular place, there to be kept till he gives fresh orders as to their destination to a new carrier, the original transit is at an end when they have reached that place, and any further transit is a fresh and independent transit."(*y*)

Bethell v. *Clark.*

In *Bethell* v. *Clark*,(*z*) the purchasers, merchants in London, directed the vendors, manufacturers at Wolverhampton, to consign the goods "to the Darling Downs, to Melbourne, loading in the East India Docks here." They delivered the goods to a railway company to be forwarded to the ship, and afterwards, having learned that the purchasers were insolvent, gave notice of stoppage *in transitu* to the Railway Company, but too late to prevent the goods being delivered on board the ship. Before the latter reached Melbourne, the vendors also claimed the goods from the shipowners. It was held that the direction by the purchasers to the vendors was, to deliver the goods for carriage to Melbourne, that the destination was therefore Melbourne, and that the transit therefore did not end on the arrival of the goods there. A similar result was arrived at in *Ex parte Watson, re Love*,(*a*) where the purchaser was under contract with the vendor to ship the goods to a specified firm in Shanghai, the vendor having a lien on the bills of lading. It was held that the destination of the goods was Shanghai, and that they could not be stopped *in transitu* until their arrival there.

Ex parte Watson, re Love.

Ex parte Miles, re Isaacs.

In *Ex parte Miles, in re Isaacs*,(*b*) on the other hand, the vendee, who was a commission agent, bought goods, as the vendors were able to infer from the terms of the order taken in connection with their previous dealings, for a firm in Jamaica. The vendee subsequently directed the vendors to forward the goods to a firm at Southampton for shipment by a particular ship, "advising them

(*y*) Per Lord Esher, M.R., *Bethell* v. *Clark*, 20 Q. B. D. at p. 617.

(*z*) 19 Q. B. D. 553; 20 *ib.* 615. Appd. by the P. C. in *Lyons* v. *Hoffnung*, 15 Ap. Ca. 391; and see *Rodger* v. *Comptoir, &c.*, L. R. 2 P. C. 393, 404.

(*a*) 5 Ch. D. 35. See this case explained in *Ex parte Miles, re Isaacs*, 15 Q. B. D. at pp. 46, 47.

(*b*) 15 Q. B. D. 39. See also *Kendal* v. *Marshall*, 11 Q. B. D. 356; *Ex parte Hughes, re Gurney*, 67 L. T. 598.

with particulars for clearance." The particulars sent by the vendors to the Southampton firm did not specify the name of the consignee, or the destination of the goods. These were afterwards furnished by the vendee. It was held that in the absence of any direction by the vendee to the vendor to forward the goods to Jamaica, or of any contract by the vendee with the vendor that he would himself do so, the destination as between them was Southampton, and that it was too late to stop *in transitu* after the goods had arrived there.

Whether original transit ended and new transit begun.

The foregoing cases indicate that no hard-and-fast rule of law can be laid down for determining at what point the transit ends in every case. The question is in each case a question of inference from known facts as to the real intention of the parties.(*c*)

§ 391. The right to stop is at an end, if the goods are delivered to an agent or servant authorised by the consignee to receive and keep them for him, or to detain them until fresh directions are given by him,(*d*) and this may, as we have seen,(*e*) occur before the goods have arrived at the destination contemplated by the consignor.

Delivery to consignee's agent to keep determines transit.

Where, for example, merchants in London were in the habit of ordering goods from manufacturers, to be sent to M. at Hull, for the purpose of being afterwards sent by M. to persons abroad, according to orders to be afterwards received from the merchants in London, it was held, that the right to stop was at an end, when the goods came into the possession of M. at Hull.(*f*)

And where the goods are delivered to an agent of the consignee at the place which, so far as regards the consignor, is the place of their destination, the circumstance that it is the duty of the agent to forward them to some new destination under the directions of the consignee, has no effect in enlarging the time during which the goods may be stopped.(*g*) And it is immaterial whether the consignee gives his directions to his agent before or after instructing the consignor as to the delivery of the goods.(*h*)

In *Kendal* v. *Marshall*,(*i*) the vendee directed the vendor to send the goods to forwarding agents at Garston. He had already advised the agents that the goods had been sent to them, and

(*c*) Per Jessel, M.R., *Merchant, &c., Co.* v. *Phœnix, &c. Co.*, L. R. 5 Eq. at p. 219.

(*d*) See per Parke, B., *James* v. *Griffin*, 2 M. & W. at p. 633; *Dixon* v. *Baldwen*, 5 East, 175; *Leeds* v. *Wright*, 3 B. & P. 320.

(*e*). See *L. & N. W. R.* v. *Bartlett*, 7 H. & N. 400.

(*f*) *Dixon* v. *Baldwen, ubi sup.*

(*g*) *Dixon* v. *Baldwen, ubi sup.*; per Cur., *Valpy* v. *Gibson*, 4 C. B. at p. 865; *Kendal* v. *Marshall*, 11 Q. B. D. 356; *Ex parte Gibbes, re Whitworth*, 1 Ch. D. 101; see also *Ex parte Miles, in re Isaacs*, 15 Q. B. D. 39; *Ex parte Francis, re Bruno*, 56 L. T. 577.

(*h*) Per Brett, L.J., 11 Q. B. D. 365.

(*i*) 11 Q. B. D. 356.

directed them that they should be forwarded to Rouen. On the failure of the vendee, the vendors sought to stop the goods in the agent's hands, and it was contended that Rouen was their destination. It was held, however, that the transit ended when the goods came to the agent's hands, and that the right to stop no longer continued.

Aliter of delivery to agent to forward.

§ 392. But, if the consignor delivers the goods to an agent for the purpose of forwarding them to the place which, as between the consignor and the consignee, is their destination, even though the agent have to retain them until a convenient opportunity for delivering them, yet, inasmuch as there is no intention that such agent should receive and keep the goods for the consignee, the transit and right of stoppage continue so long as they are in the agent's hands.(*k*)

And the delivery of the goods to an agent of the consignee does not put an end to the transit, if he is merely an agent to forward the goods towards the place which is, as between consignor and consignee, their destination, and not to receive and keep them at the consignee's orders.(*l*)

Thus, if goods consigned by the vendor to the vendee are sent by sea to a port, from whence they have to be forwarded by land, and upon the ship's arrival at the port are delivered to a wharfinger, who receives them on the part of the vendee to be forwarded to him accordingly, the transit is not at an end while they are in the hands of the wharfinger.(*m*)

Carrier may agree to become agent to keep.

We have already seen(*n*) that if the master or carrier enters, either expressly or by implication, into a new agreement with the consignee distinct from the original contract for carriage—viz., to hold the goods for the consignee as his agent, not for the purpose of forwarding them to their destination, pursuant to the original contract, but for the purpose of keeping as a warehouseman on account of the consignee, until some new order is received from him, the goods have, in such case, come to the constructive possession of the consignee, and the transit and right of stoppage are at an end.

When delivery of part is delivery of the whole, so as to put an end to right of stoppage.

§ 393. The delivery of part of the goods operates as a delivery of the whole, and puts an end to the transit and the right of stoppage in those cases, and those only, where it is made in progress of and with a view to the delivery of the whole, the

(*k*) *Smith* v. *Goss*, 1 Camp. 282; *Coates* v. *Railton*, 6 B. & Cr. 422; *Jackson* v. *Nichol*, 5 Bing. N. C. 508.

(*l*) *Jackson* v. *Nichol*, 5 Bing. N. C. 508; *Nicholls* v. *Le Feuvre*, 2 Bing. N. C. 81; *Bethell* v. *Clark*, 19 Q. B. D. 553; 20 *ib.* 615; *Lyons* v. *Hoffnung*, 15 Ap. Ca. 391.

(*m*) *Mills* v. *Ball*, 2 B. & P. 457. For parallel cases of goods sent by land to a seaport, and there delivered on board a ship named by the consignee, see *Ex parte Watson, re Love*, 5 Ch. D. 35; *Bethell* v. *Clark*, 20 Q. B. D. 615; § 390 *supra*.

(*n*) *Ante* § 381.

consignee taking possession with that view and his intention being acquiesced in by the carrier.(*o*)

The following examples illustrate this proposition :—

When delivery of part sufficient.

In *Slubey* v. *Heyward*,(*p*) the owner of a cargo of wheat sold it to G. & H. B., and transmitted to them a bill of lading by which the wheat was deliverable to them or their assigns. G. & H. B. sold to S. and indorsed the bill of lading to him, and S. with the consent of G. & H. B. ordered the ship to Falmouth, and there began receiving the cargo from the master, and received 800 bushels ; it was held that this was a delivery of the whole, there appearing no intention to separate part of the cargo from the rest, and that therefore the transit was over, and right to stop the rest was gone.

A similar result was reached in *Hammond* v. *Anderson*,(*q*) where bales of bacon lying at a wharf were sold, and an order was given by the vendors to the wharfinger to deliver them to the vendee, and the vendee went to the wharf, weighed all the bales, and took away several.

In *Jones* v. *Jones*,(*r*) a vessel laden with 80 quarters of wheat arrived at Barmouth, and the assignee of the insolvent vendee of the wheat went on board, took samples and sold 70 quarters, for which he paid freight, and which were delivered to the sub-vendees. He then directed the master to take the other 10 quarters to Tremadoc. It was held, that these circumstances showed, that the entry on board at Barmouth and taking of samples was with the intention of taking the whole, and that the right of stoppage over the remainder was gone.

When delivery of part is not sufficient.

§ 394. On the other hand, if the consignee take possession of part of the goods, not intending thereby to take possession of the whole, but merely to separate that part and to take possession of that part only, and not intending by taking that part to exercise an act of ownership over the whole, such taking possession puts an end to the transit and the right of stoppage only with respect to that part and no more, and the right of stoppage over the remainder will continue.(*s*)

In *Tanner* v. *Scovell*,(*t*) goods were forwarded by ship to London,

(*o*) *Slubey* v. *Heyward*, 2 H. Bl. 504; *Dixon* v. *Yates*, 5 B. & Ad. 313; *Bunney* v. *Poyntz*, 4 B. & Ad. 568; *Hammond* v. *Anderson*, 1 N. R. 69; *Tanner* v. *Scovell*, 14 M. & W. 28, 36; *Ex parte Cooper*, *re McLaren*, 11 Ch. D. 68.

(*p*) 2 H. Bl. 504.

(*q*) *Hammond* v. *Anderson*, 1 B. & P. N. R. 69; see also *Ex parte Gibbes*, *re Whitworth*, 1 Ch. D. at p. 109, per Bacon, C.J.

(*r*) 8 M. & W. 431.

(*s*) Per Cur., *Tanner* v. *Scovell*, 14 M. & W. 28, 37; *Jones* v. *Jones*, 8 M. & W. 431, 442; *Bunney* v. *Poyntz*, 4 B. & Ad. 568, 570; *Bolton* v. *Lanc. & York. R. Co.*, L. R. 1 C. P. 431, 440; *Miles* v. *Gorton*, 2 Cr. & M. 504. It was said that a delivery of part *primâ facie* imports an intention to deliver the whole; *Betts* v. *Gibbins*, 2 A. & E. 73. That dictum is now overruled; see *Tanner* v. *Scovell*, 14 M. & W. at p. 37; 1 S. L. C. 9th ed. 805; *Ex parte Cooper*, *re McLaren*, 11 Ch. D. 68.

(*t*) 14 M. & W. 28; see also *Bolton* v. *Lanc. & York. R. Co.*, L. R. 1 C. P. 431, *sup.* § 387, and cases cited in note (*s*).

When delivery of part is not sufficient.

deliverable to B. & Co., or their assigns, and were landed at the defendants' wharf. M. contracted with B. & Co., for the purchase of these, and the vendors gave an order to the defendants "to weigh and deliver" the goods to M. The goods were accordingly weighed and an account of the weights sent to B. & Co., who made out invoices to M. accordingly. M. resold several bales, which were delivered upon M.'s order, to his vendees. The remaining bales continued on defendants' wharf, and it was held, that, inasmuch as the delivery of part of the goods was not intended to be, and did not operate as a delivery of the whole, but was a separation for the purpose of that part only, B. & Co.'s right of stoppage over them continued to exist.

In *Ex parte Cooper, re McLaren*,(*u*) 114 tons of miscellaneous iron castings were shipped by vendors in Scotland to a consignee in London. On the arrival of the ship, and a part only of the freight having been paid, 30 tons were delivered. The consignee then, being not only the purchaser of the goods, but also a member of the vendor's firm, and having learned that both firms were insolvent, gave directions to stop taking delivery. The vendors gave notice to stop before any further delivery was made, and before the full freight had been paid. It was held that it lay upon the purchaser's trustee in bankruptcy to show that the delivery of part operated as a delivery of the whole. And that inasmuch as the captain could not have intended to give up his lien for unpaid freight, he did not intend to deliver the whole; and that for the same reason it could not be inferred that the purchaser intended to take delivery of part as delivery of the whole. It was further held that the fact that the purchaser was a member of the vendor's firm, did not affect the latter's right to stop.

How the Right may be Defeated while the Goods are in Transit.

Generally.

§ 395. We have seen above that if the consignee takes the goods out of the possession of the master or carrier into his own possession, either before or after their arrival at their destination, with the consent of the master or carrier, the transit and the right to stop thereupon cease.(*x*) The right of stoppage may also be defeated, while the goods are in transit, by the transfer of the bill of lading for value to a third person.

But the consignor's right cannot be defeated before the termination of the transit by the attachment of the goods under legal process issued against the consignee;(*y*) or by the carrier's assertion of a general lien against the consignee;(*z*) or, apart from the

(*u*) 11 Ch. D. 68.
(*x*) *Supra* §§ 385, 386.
(*y*) *Smith* v. *Goss*, 1 Camp. 282; cp. *Northey* v. *Field*, 2 Esp. 613; *Morley* v. *Hay*, 3 Man. & Ry. 396.
(*z*) *Oppenheim* v. *Russell*, 3 B. & P.

provisions of the Factors' Act,(*a*) by the consignee's transferring a shipping note or a delivery order to a third person for value;(*b*) or by his sale of goods not in his possession to a third party, unaccompanied by a transfer of the bill of lading or of a document of title. In such a case the title of the third party is subject to the right of stoppage *in transitu*, for he cannot be allowed to stand in a better situation than the consignee.(*c*)

And in America it is laid down in many cases that this right of the consignor cannot be defeated by any bargain between the consignee and his assignee, or by any claim, or lien, or attachment of any other person.(*d*)

By transfer of the bill of lading.

§ 396. The transfer of the bill of lading, by indorsement or otherwise, to the consignee does not defeat the consignor's right to stop.(*e*) Still less does the mere signature by the master of a bill of lading making the goods deliverable to the consignee's order.(*f*)

When transfer of bill of lading puts an end to right.

But the right is put an end to if the consignee, being the *bonâ fide* and authorised holder (*g*) of a bill of lading of, or document of title to,(*h*) the goods, during the transit and before the right of stoppage has been exercised, transfer (*i*) such bill of lading to a third (*k*) person for valuable consideration; provided the latter takes the document in good faith (*l*) and without notice of fraud or insolvency on the part of the consignee,(*m*) or of any circumstance which would render the bill of lading not fairly and honestly assignable.(*n*)

The good sense of this rule is manifest, when it is remembered that the right to stop *in transitu* was originally introduced in Equity(*o*) in favour of the unpaid consignor, and that it would be most inequitable if, after the consignor has placed the bill of lading in the consignee's hands and so enabled him to transfer or

42; *Nicholls* v. *Le Feuvre*, 2 B. N. C. 81.

(*a*) 52 & 53 Vict. c. 45, s. 10.

(*b*) *Akerman* v. *Humphery*, 1 C. & P. 53; affd., see *Tucker* v. *Humphrey*, 4 Bing. at p. 523; *Jenkyns* v. *Usborne*, 7 M. & Gr. 678; *McEwan* v. *Smith*, 2 H. L. Cas. 309.

(*c*) *Jenkyns* v. *Usborne*, 7 M. & Gr. 678; *Craven* v. *Ryder*, 6 Taunt, 433; *Nix* v. *Olive*, Abbott Sh., 13th ed., 707; *Kemp* v. *Falk*, 7 Ap. Ca. 573; 1 S. L. C. 9th ed. 807.

(*d*) 1 Parsons on Shipping, 520.

(*e*) *Tucker* v. *Humphrey*, 4 Bing. at p. 522; *The Tigress*, B. & L. at p. 44; *Nix* v. *Olive*, Abbott, 13th ed. 707.

(*f*) *Thompson* v. *Trail*, 6 B. & C. 36; and see *Feise* v. *Wray*, 3 East, 93.

(*g*) *Gurney* v. *Behrend*, 3 E. & B. 622; Benjamin on Sale, 4th ed. 891.

(*h*) 52 & 53 Vict. c. 45, s. 10.

(*i*) The transfer may be by way of pledge only. See *The Marie Joseph*, L. R. 1 P. C. 219; *Coventry* v. *Gladstone*, L. R. 4 Eq. 493; 6 Eq. 44; in which case the right is defeated to the extent of the pledgee's interest, see *Re Westzinthus*, 5 B. & Ad. 817, and § 399 *inf.*

(*k*) *The Tigress*, B. & L. at p. 44.

(*l*) *Lickbarrow* v. *Mason*, 1 S. L. C. 9th ed. 737; *Newsom* v. *Thornton*, 6 East, 17, 40; *Cuming* v. *Brown*, 9 East, 506; *The Marie Joseph*, L. R. 1 P. C. 219; *Pennell* v. *Alexander*, 3 E. & B. 283. A past consideration will support the transfer: *Leask* v. *Scott*, 2 Q. B. D. 376 (dissenting from *Rodger* v. *Comptoir, &c.*, L. R. 2 P. C. 393).

(*m*) *The Argentina*, L. R. 1 Adm. 370; *Cuming* v. *Brown*, 9 East, at p. 514.

(*n*) Abbott, 13th ed. 704.

(*o*) 1 S. L. C. 9th ed. 794.

pledge it and deceive the transferee, the consignor were allowed to set aside what he has himself enabled the consignee to do, and so deprive the *bonâ fide* transferee of the goods, which the consignor has by his own act induced the transferee to purchase.(*p*)

And although such *bonâ fide* transferee for value of the bill of lading knew, at the time when the bill of lading was so transferred to him, that the consignor had not received money payment for the goods, but had taken consignee's acceptances payable at a future day not then arrived, the right to stop is put an end to, if the transferee at the time of the transfer had no reason to know or apprehend that the consignee was insolvent, or that the bills given by him for the goods were not likely to be paid.(*q*)

Accordingly, the right to stop in such a case is also put an end to, even if bills of exchange have been given to the consignor for the goods, which are certain to be dishonoured, or even if the consignor has been induced by the consignee's fraud to transfer the bill of lading to the consignee, provided the indorsee has acted *bonâ fide* and without notice.(*r*)

§ 397. By s. 10 of the Factors Act, 1889 :(*s*)

Or of document of title under the Factor's Act, 1889.

Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu*, as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

When transfer of bill of lading does not put an end to the right.

§ 398. But, inasmuch as a bill of lading is not negotiable in the same sense as a bill of exchange,(*t*) in order that its transfer by the consignee may put an end to the consignor's right to stop, it is essential that the bill of lading should have come into the hands of the consignee, with the authority of the consignor.(*u*) If, for example, the bill of lading has been stolen from the consignor, or transferred without his authority, a subsequent *bonâ fide* transferee for value cannot make title under it, as against the shipper of the goods. And even although the shipper may have indorsed in blank a bill of lading deliverable to his assigns, his right is not affected by an appropriation of it without his authority.(*x*)

A transfer by a consignee will not defeat the right of stoppage if it is subject to a condition with which the indorsee has failed

(*p*) See *Rodger* v. *Comptoir, &c.*, L. R. 2 P. C. at p. 406.

(*q*) *Cuming* v. *Brown*, 9 East, 506; *Jones* v. *Jones*, 8 M. & W. 431.

(*r*) *The Marie Joseph*, L. R. 1 P. C. 219.

(*s*) 52 & 53 Vict. c. 45.

(*t*) *Supra* § 343.

(*u*) See per Tindal, C.J., *Jenkyns* v. *Usborne*, 7 M. & G. 697; *Rodger* v. *Comptoir, &c.*, L. R. 2 P. C. at p. 405.

(*x*) *Gurney* v. *Behrend*, 6 El. & Bl. 622; explained in *The Marie Joseph*, L. R. 2 P. C. 219, 228.

to comply;(*y*) or if the transferee has given no value or consideration for the transfer of the bill of lading to him;(*z*) or if he act *malâ fide*:(*a*) as, for instance, if he has notice at the time of the transfer that the original indorsement by the consignor was only made on a condition which had not not been fulfilled,(*b*) or has assisted in contravening the actual terms upon which the goods were sold by the consignor, or his reasonable expectations arising out of them, or his rights connected therewith;(*c*) or if he had notice at the time of the transfer of the insolvency of the consignee;(*d*) or if the transferee, after the transfer, becomes jointly interested with the consignee in the adventure, and undertakes to pay for the goods.(*e*)

A transfer of the bill of lading by the consignee to his factor, to whom the goods are consigned for the purpose of being sold by him on account of his principal, will not defeat the right of stoppage, although the factor is under acceptance to the consignee on a general account; though it would be otherwise if there were a specific pledge of the cargo, as if bills had been accepted on the credit of the particular consignment.(*f*)

Transfer of bill of lading for limited purpose, defeats right of stoppage to limited extent only.

§ 399. And although the right of the consignor to stop goods *in transitu* is defeated in law by the indorsement of a bill of lading for a limited purpose, as for instance to secure a sum of money, it will still remain in equity, subject to a lien for the indorsee's demand, and its exercise will vest in the consignor a right to the surplus after discharging that lien.(*g*) The Judicature Act, 1873, enables all the courts to give effect to this doctrine.(*h*)

(*y*) *Newsom* v. *Thornton*, 6 East, 17.
(*z*) *Newsom* v. *Thornton*, 6 East, at p. 40; *Rodger* v. *The Comptoir*, L. R. 2 P. C. 393; *Waring* v. *Cox*, 1 Camp. 369.
(*a*) *Cuming* v. *Brown*, 9 East, 506, 514; 1 S. L. C. 9th ed. 811.
(*b*) See *Barrow* v. *Coles*, 3 Camp. 92.
(*c*) Per Lord Ellenborough, 9 East, at p. 514.
(*d*) *Vertue* v. *Jewell*, 4 Camp. at p. 33.
(*e*) *Salomons* v. *Nissen*, 2 T. R. 674.
(*f*) *Patten* v. *Thompson*, 5 M. & S. 350; *Kinloch* v. *Craig*, 3 T. R. 119, 783.
(*g*) *Spalding* v. *Ruding*, 6 Beav. 376; 15 L. J. Ch. 374; *Re Westzinthus*, 5 B. & Ad. 817; *Coventry* v. *Gladstone*, L. R. 6 Eq. 44; *Kemp* v. *Falk*, 7 Ap. Ca. 573.
(*h*) 36 & 37 Vict. c. 66, s. 25 (11).

CHAPTER VIII.

WHEN THE MASTER MAY BIND THE SHIPOWNER BY HIS PERSONAL CONTRACTS.

§§ 400 – 402.—*By Contracts relating to the usual course of the Ship's employment* . 282
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By Contracts relating to the usual Course of the Ship's Employment.

Generally.

§ 400. THE master, as confidential agent of the owners, has an implied authority to bind them, by any legal contract, which he may make relating to the usual employment of a general ship.(*a*)

His authority in this respect is very large and extends to all acts, which are usual and necessary for the use and employment of the ship. Constant usage shows that the master has this general authority; and his authority "to perform all things usual in the line of business, in which he is employed, cannot be limited by any merely private order or direction not known to the party dealing with him."(*b*)

The course of the usual employment of the ship is evidence of authority given by the owners to the master to make for them and on their behalf a contract relating to such employment; and consequently a contract so made by him is esteemed in law to have been made by them.(*c*) And they will be bound by it, although made without their knowledge or approbation, and even against their orders, if the party, with whom the master contracted, had no knowledge that the master was acting without authority.(*d*)

(*a*) Abbott on Shipping, 13th ed. 119; Kent's Com. iii. 161; Story on Agency, 116.

(*b*) Per Jervis, C.J., *Grant* v. *Norway*, 10 C. B. 687; per Blackburn, J., *Reynolds* v. *Jex*, 34 L. J. Q. B. p. 255, quoting Smith's Merc. Law, 10th ed. 139.

(*c*) Abbott, 13th ed. 119, 120.

(*d*) Story on Agency, 443; *Grant* v. *Norway*, *ubi sup.*; *Ellis* v. *Turner*, 8 T. R. 531; Abbott, *ubi sup.*

Contracts relating to ship's employment.

The master may bind the owners by letting the ship on a charter-party and taking shipments on freight, if such is the usual employment of the ship, but not otherwise;(*e*) or by any particular engagement or warranty relating to the usual employment of the ship.(*f*) And in such case the owners will be liable on the contract of carriage in case of the loss of the goods from any cause other than an excepted peril.(*g*) His authority to bind his owners by signing bills of lading has been sufficiently discussed above.(*h*) His power to bind them by the sale of the ship, or the hypothecation of ship and freight, will be considered below.(*i*) He has authority in a foreign port, to settle accounts for freight, demurrage and delay, and all such matters;(*k*) or to commence an action *in rem* for injury by collision to the ship and cargo of which he is in charge.(*l*)

If shipowner present, master has less power,

§ 401. "Ordinarily," says Mr. Justice Story,(*m*) "these incidental powers belong to the master only in the absence of the owner or employer of the ship; as, for example, when the ship is in a foreign port and not in the home port.(*n*) For, when the owner or employer is present, he is known to possess and is presumed to exercise his own right of general superintendence over the conduct of the ship and its concerns, unless some presumption of a delegation of authority to the master can be implied, either from the usage of trade, or from the particular employment of the ship, or from the conduct and proceedings of the parties. Even in the home port, however, there are many acts, which are so invariably confided to the master, as to amount to a positive delegation of authority.(*o*) Thus, the master is ordinarily entrusted with the authority of shipping the officers and crew,(*p*) of superintending the ordinary outfits, equipments, repairs, and other preparations of the ship for the voyage,(*q*) of lading and unlading the cargo; and in cases of a general ship, of receiving goods on freight and of signing bills of lading for the same.(*r*) These are such

but may even then transact matters usually entrusted to him.

(*e*) Story on Agency, 116; *Reynolds* v. *Jex*, 7 B. & S. 86; *Grant* v. *Norway*, 10 C. B. 687.

(*f*) *Rinquist* v. *Ditchell*, Abbott, 13th ed. 125. But it is doubtful whether he can bind the owners by a stipulation in the charter-party for advances to himself against freight. *Gibbs* v. *Charleton*, 26 L. J. Ex. 321.

(*g*) *Boson* v. *Sandford*, Carth. 58; *Boucher* v. *Lawson*, Rep. temp. Hardwicke, 85, 194; Abbott, 13th ed. 123; *Ellis* v. *Turner*, 8 T. R. 531.

(*h*) §§ 330—333; 355, 356.

(*i*) §§ 412—417; 429—444.

(*k*) *Alexander* v. *Dowie*, 1 H. & N. 152.

(*l*) *The Reinbeck*, 60 L. T. 209; *supra* § 85.

(*m*) Story on Agency, § 119.

(*n*) This limit applies to his power of chartering the ship; per Brett, L.J., *The Fanny; The Matilda*, 48 L. T. 771.

(*o*) Per Lord Campbell, *Frost* v. *Oliver*, 2 E. & B. at p. 305; Abbott, 13th ed. 132.

(*p*) Including, it would seem, the employment of a pilot. See *The Nelson*, 6 C. Rob. 227. As to contracts for extra remuneration for special services, see *Yates* v. *Hall*, 1 T R. 73; *The Christiana*, 5 (Irish) Jur. N. S. 63; § 506 *inf.*

(*q*) But not to pledge the owner's credit for them, if he or a solvent agent is at the port; *Gunn* v. *Roberts*, L. R. 9 C. P. 331; *inf.* § 407.

(*r*) See *Grant* v. *Norway*, 10 C. B. 665.

usual incidents of his official character, that notice of a positive prohibition would seem indispensable in order to affect third persons with his want of due authority to do the acts."

Master's implied authority limited to what is usual,

§ 402. But it must be borne in mind, that the master of a ship, on a foreign voyage, has no authority to bind his employer to everything, which he may deem to be, or which really may be, for the interest of his employer.(*s*) "The incidental powers of the master, which we are considering, are limited to such contracts and matters as relate to the usual employment and business of the ship. Thus, if the ordinary employment of the ship has been the carrying of cargoes on the sole account of the owner, the master has no implied authority to let the ship to freight, even in a foreign port. So if the ordinary employment has been to take goods on board on freight as a general ship, the master will not be presumed to possess authority to let the ship on a charter-party for a special and different business. And if the ship has been accustomed to carry passengers only, the master will not be presumed to possess authority to take goods on board on freight."(*t*)

And although he may make contracts for the hire of the ship, he cannot vary one which the owner has made; or alter the voyage;(*u*) or substitute a new voyage for one, which has been agreed upon between his owners and the freighters;(*x*) or sign bills of lading for a lower rate of freight, than the owner has contracted for;(*y*) or make freight payable to any other person than the owner; or execute a charter-party excluding the right of the owners to freight;(*z*) or sign bills of lading for cargo which has not been shipped;(*a*) or bind his owners by a contract to carry freight free.(*b*) Nor can he authorise a broker to charter his ship in a foreign port before her arrival there, so as to bind the owner by a charter-party made in pursuance of such authority.(*c*)

and to lawful acts.

So, in the absence of proof to the contrary, it must be taken that the master's authority is limited to that which is lawful. If he does an act in contravention of the laws of his country, he is guilty of a breach of the implied orders of his owners. If, in seeking to carry out the purpose of his employment, he oversteps the law, he outruns his authority, and his owner will not be bound by what he does.(*d*)

(*s*) Per Parke, B., *Stainbank* v. *Shepard*, 13 C. B. 441.

(*t*) Story on Agency, 121.

(*u*) *Grant* v. *Norway*, 10 C. B. at p. 687.

(*x*) *Burgon* v. *Sharpe*, 2 Camp. 529.

(*y*) *Pickernell* v. *Jauberry*, 3 F. & F. 217; *Hyde* v. *Willis*, 3 Camp. 202.

(*z*) *The Sir Henry Webb*, 13 Jur. 639; *Walsh* v. *Provan*, 8 Ex. 843; *Reynolds* v. *Jex*, 7 B. & S. 86.

(*a*) *Hubbersty* v. *Ward*; 8 Ex. 330; *supra* § 332; *Grant* v. *Norway*, 10 C. B. 665.

(*b*) *Grant* v. *Norway*, *ubi sup.*

(*c*) *The Fanny*, *The Matilda*, 48 L. T. 771.

(*d*) *Wilson* v. *Rankin*, L. R. 1 Q.B. 162.

If the master executes a charter-party under seal, this will not bind the owners, or enable the charterer to bring his action against them, unless the master was authorised by deed by the owners, to execute such a sealed instrument for them,(*e*) for it is a rule of our law, that a deed cannot be executed except by the person who is to be bound by it, or by another for him in his presence and by his direction,(*f*) or in his absence, by an agent duly authorised to do so by another deed.(*g*) When he may execute a deed.

For Matters which are Necessary for the Prosecution of the Voyage.

§ 403. We have already seen that the master is entitled to recover from the owners, and has a maritime lien for all his disbursements, properly made on account of the ship.(*h*) Further than this, as he is appointed by the owners for the purpose of conducting the navigation of the ship to a favourable termination, he possesses, as incident to that appointment, when he cannot communicate with his owners, or their agent,(*i*) an implied authority to bind them for all that is necessary to that end.(*k*) By virtue of this authority, he may pledge the credit of the owner for all such repairs, and for the supply of all such provisions, and may make all such contracts and do all such other things, as are reasonably necessary for the due and proper prosecution of the voyage, in which the ship is engaged.(*l*) Indeed, as has been seen above,(*m*) a master may, if it be clearly necessary to do so, even appoint another master in his place; although generally, an agent cannot delegate his power or duty without special authority; and the master so appointed by a master, may bind the owner in like manner as the original master might have done. Generally.

But in order that the master's contract may be binding on the owners, it must be shown either that they authorised him to contract on their behalf, or that he was acting, with their privity and consent, as *their* master.(*n*) And, in the absence of express authority, he has no power to bind the owners in respect of matters connected with the voyage, which are not necessary for its due prosecution.(*o*) When owners not bound.

Where for example, certain of the crew had sustained injury in weighing anchor, and the captain had them taken ashore and left them at a public-house, saying the owners would pay for

(*e*) *Horsley* v. *Rush*, cited in *Harrison* v. *Jackson*, 7 T. R. 209.
(*f*) Story on Agency, 51.
(*g*) *Ibid.*, 49.
(*h*) *Supra*, § 73 *et seq.*
(*i*) *Infra*, §§ 407, 408.
(*k*) Per Parke, B., *Beldon* v. *Campbell*, 6 Ex. 889.
(*l*) Per Lord Abinger, *Arthur* v. *Barton*, 6 M. & W. 138, 143; *Beldon* v. *Campbell*, 6 Ex. 886; *Frost* v. *Oliver*, 2 E. & B. 301. As to the master's authority to bind the owners by agreements for services in the nature of salvage, see *infra* § 733. As to his authority to institute an action for collision, *The Reinbeck*, 60 L. T. 209; *supra* § 85.
(*m*) § 18; 2 Parsons, Sh., 18.
(*n*) *Mitcheson* v. *Oliver*, 5 E. & B. 419; *The Great Eastern*, L. R. 2 Ad. 88.
(*o*) *Organ* v. *Brodie*, 10 Ex. 449.

For matters necessary for the voyage.

what the sailors had, although there was then no probability that they could rejoin the ship for that voyage, it was held, that the owners were not liable, inasmuch as it was not necessary that those seamen should be cured, in order that the vessel might proceed on her voyage; but it was added by Parke, B., that, if that had appeared to be the case, the owner would have been responsible for all necessary supplies of medicine ordered by the captain, and perhaps even for provisions.(*p*)

In *The James Seddon*,(*q*) on the other hand, a master, while at a foreign port with a homeward bound ship, incurred expenses in defending himself against a charge of murder maliciously brought by two of the crew, whom he had censured for misconduct. The master was tried at the foreign port and acquitted, and bound over in a sum of £10 to prosecute the men for perjury. He forfeited the £10 in order to return with the ship to England. In a suit against the owner for disbursements, it was held that the master was entitled to the expenses of his defence, on the ground, that the charge originated directly in the performance of his duty to the owners in chastising the men, and also that he was entitled to the £10 forfeit, as it was for the interests of his owners that the master should return with the ship without delay.

And although he may render the owners personally liable for necessary supplies or repairs, he cannot give the persons who provide them a maritime lien upon the ship,(*r*) except in a proper case by means of a bottomry bond.(*s*)

For necessary repairs and supplies.

§ 404. The master may bind the owners personally for necessary repairs, supplies, and equipments furnished to the ship.(*t*) So that the person, who furnishes any of these things, or the money to pay for them, has the personal security of both master and owners.(*u*)

Meaning of "necessary."

This authority of the master is not confined to what is absolutely necessary. "Whatever is fit and proper for the service on which a vessel is engaged, whatever the owner, as a prudent man would have ordered, if present at the time, comes within the term necessary, as applied to those repairs done, or things pro-

(*p*) *Organ* v. *Brodie*, 10 Ex. 449. As to the rights of seamen to medical and surgical aid where they have sustained injuries abroad in the service of the ship, see 17 & 18 Vict. c. 104, s. 228; *infra* § 526.

(*q*) L. R. 1 Adm. 62.

(*r*) *The Heinrich Bjorn*, 11 Ap. Ca. 270; 10 P. D. 44.

(*s*) *Infra*, Chap. IX.

(*t*) *Rich* v. *Coe*, Cowp. 636; *Cary* v. *White*, 5 Bro. P. C. 325; *Arthur* v. *Barton*, 6 M. & W. 138; *Johns* v. *Simons*, 2 Q. B. 425; *Stonehouse* v. *Gent*, *ib.* 431, n.; *Weston* v. *Wright*, 7 M. & W. 396; Kent's Com. iii. 163; Story on Agency, 116, 122.

(*u*) Where necessaries are supplied to a foreign ship, or a ship elsewhere than in the port to which she belongs, and of which no owner or part owner is domiciled in England or Wales, the person who supplies them has also a remedy against the ship, though no maritime lien over her. See 3 & 4 Vict. c. 65, s. 6; 24 Vict. c. 10, s. 5; *The Cella*, 13 P. D. 82; see also 53 & 54 Vict. c. 27, s. 2 (3) (*a*), as to British possessions.

vided for the ship by order of the master, for which the owners are liable." The proper mode therefore, of ascertaining whether supplies or repairs were necessary is to ask, whether a prudent owner would himself have ordered them under the circumstances, if he had been present.(x)

For money borrowed.

§ 405. As the master may bind the owners by a contract for necessaries, so he may borrow money on their credit for disbursements and repairs which are necessary to enable the ship to prosecute her voyage; but only in those cases in which ready money is necessary for that purpose.(y) The amount which he has authority to borrow is so much, but only so much, as is required at the time by the exigency of the case.(z)

Examples: Provisions. Towage. Dues.

The master may borrow money, on his owner's credit, to enable him to purchase provisions and supplies necessary for the use of the ship;(a) or to obtain necessary towage services;(b) or for the purpose of payments which must be made in the course of the voyage, and for which ready money is necessary, such as port, harbour, pilotage, light or any like dues, where the prosecution of the voyage cannot take place till they are discharged.(c)

Wages.

So, where a ship had been engaged in Her Majesty's transport service, and being in the port of Portsmouth on her release from quarantine, was ordered by the Transport Board to proceed to Deptford, the master was held entitled to borrow money on the owner's credit to pay seamen's wages, as Portsmouth was a port of discharge, and as the seamen might have refused to assist in the further navigation of the ship.(d) And even where a charter-party provided that sufficient money, not exceeding a certain sum, should be advanced to the master for disbursements, and the party to whom the ship was addressed advanced a larger sum for necessary disbursements, it was held that the full amount advanced was recoverable against the owners.(e)

To release ship.

If a ship is arrested in a foreign port by the law of the country for necessary repairs or supplies already furnished to her, or is detained by the shipwright who repaired her until his bill is paid, the master may borrow on his owner's credit the money which is

(x) Per Abbott, C.J., *Webster* v. *Seekamp*, 4 B. & Ald., 352, 354; *The Alexander*, 1 W. Rob. 367; see also per Story, J., *The Fortitude*, 3 Sumn. 228, 237; Abbott, 13th ed. 132. There is no distinction between necessaries for the ship and necessaries for the voyage: *The Riga*, L. R. 3 Ad. 516.

(y) *Evans* v. *Williams*, Abbott, 13th ed. 133; *Cary* v. *White*, 5 Bro. P. C. 325; *Beldon* v. *Campbell*, 6 Ex. 886; *Rocher* v. *Busher*, 1 Stark. 27; *Grant* v. *Norway*, 10 C. B. at p. 687.

(z) *Rocher* v. *Busher*, 1 Stark. 27; *Palmer* v. *Gooch*, 2 Stark. 428.

(a) *Edwards* v. *Havill*, 14 C. B. 107; *Arthur* v. *Barton*, 6 M. & W. 138.

(b) Per Parke, B., *Beldon* v. *Campbell*, 6 Ex. at p. 890.

(c) *Evans* v. *Williams*, Abbott, 13th ed. 133; *Arthur* v. *Barton*, 6 M. & W. at p. 144; *Beldon* v. *Campbell*, 6 Ex. at p. 890.

(d) *Robinson* v. *Lyall*, 7 Price, 592.

(e) *Vaughan* v. *Fitzhugh*, 3 Jur. 1002.

necessary to pay the creditor, in order to release the ship and to enable her to prosecute her voyage.(*f*)

No authority to borrow to pay for repairs already executed.

But he has no authority, in general, to borrow money on the credit of the owner to pay for work, or repairs, or supplies which have been already provided on credit, when there was no prior stipulation for payment in ready money;(*g*) although the owner might have been liable upon the original contract under which the work, or repairs, or supplies were provided.(*h*)

To render shipowner liable, burthen of proving necessity is on lender.

§ 406. In order to make out a valid claim for money advanced against the owners, the lender must prove the necessity of the loan at the time it was made.(*i*) He must also prove that the specific sum claimed was advanced expressly for the purposes of the ship. It is not enough to charge the owners, that the money was advanced to the master on a general account, and was afterwards applied to those purposes.(*k*) This is required on account of the facility of misapplication and the temptation to abuse to which the power of borrowing is incident. It has been said that the lender on bottomry is not required to see to the application of the money.(*l*) He is not in such a case required to calculate the expediency under all the circumstances of the outlay.(*m*) In the absence of proof that the money was borrowed for the necessary service of the ship, the master alone is liable.(*k*)

No such authority if the shipowner or his agent can be consulted.

§ 407. The master has no authority to obtain any repairs or supplies, or to raise money upon the credit of the owner, however clear may be the necessity, in cases where the owner or his agent is at the port where the ship is lying, or so near to it that the master is able, under the circumstances, to communicate with and consult him, without serious prejudice to the owner's interest by the delay occasioned thereby.(*n*)

Thus, in one case, the ship was in the port of Swansea and the owner at Llanelly, only eleven miles distant, and the master being in want of money to clear the vessel, and being unable to raise it—as the owner had directed—by selling part of the cargo, sent three messages to the owner for money, but received none, where-

(*f*) *The Albert Crosby*, L. R. 3 Adm. 37; and see § 434 *infra*.

(*g*) *Beldon* v. *Campbell*, 6 Ex. 886; *Frost* v. *Oliver*, 2 El. & Bl. 301. In America the rule seems to be well settled, that the master has authority to borrow money, not only for the purpose of buying necessaries, but also to pay for necessaries already bought. Parsons, Shipping, ii. 16; and see *Robinson* v. *Lyall*, 7 Price, 592.

(*h*) *Beldon* v. *Campbell*, 6 Ex. 886; *Robinson* v. *Lyall*, 7 Price, 592.

(*i*) *Mackintosh* v. *Mitcheson*, 4 Ex. 175; Kent's Com. iii. 163.

(*k*) *Thacker* v. *Moates*, 1 M. & Rob. 79; *Palmer* v. *Gooch*, 2 Stark. 428. See however *Ashmall* v. *Wood*, 3 Jur. N. S. 232; it seems that, in certain cases at least, the owner may be ordered to repay to the lender an amount equivalent to the benefit he has derived from the loan.

(*l*) *The Jane*, 1 Dods. 461, 465; 2 Kent's Com. iii. 163. See, however, *The Orelia*, 3 Hagg. 75, 84; *Rocher* v. *Busher*, 1 Stark. at p. 28; *Palmer* v. *Gooch*, 2 Stark. 428, 430, per Abbott, C.J.

(*m*) *The Vibilia*, 1 W. Rob. 1, 10.

(*n*) *Gunn* v. *Roberts*, L. R. 9 C. P. 331; *Beldon* v. *Campbell*, 6 Ex. 886; *Arthur* v. *Barton*, 6 M. & W. 138; *Johns* v. *Simons*, 2 Q. B. 425.

upon he borrowed £10, telling the lender of the applications to the owner. It was held that the master was not authorised to borrow, and that the lender could not recover the money from the owner, although the jury found that the money was advanced for the necessary use of the ship, and on the credit, not of the master, but of the owner.(*o*)

No such authority if shipowner or agent can interfere within reasonable time.

So, where the ship was at Newcastle, and the owner resided at Newport, in South Wales, which was within one day's post of Newcastle, it was held that the master could not pledge the owner's credit for money, which he wanted to pay to a master shipwright for some repairs, which were necessary before the ship could proceed on her voyage, as it was competent for the master to have consulted the owner.(*p*)

§ 408. But although the ship and her owner are in the same country, still, if the existing necessity is so great that the master cannot wait to consult him without considerable prejudice to the owner's interests, or if, in other words, the power of communication is not correspondent with the existing necessity, the master is authorised to pledge the owner's credit.(*q*) But in all cases, the authority of the master to pledge the owner's credit, is confined to such outlay as is reasonably necessary, for the purpose of bringing the ship to her destination.

Proximity of owner not conclusive if necessity pressing.

In *Arthur* v. *Barton*,(*r*) the shipowner lived at Port Madoc, Merionethshire, and the ship put into Swansea, on her homeward voyage, and the master borrowed £5 which was applied as follows:—£1 7*s.* for loading the ship with a cargo which the master had contracted to take on board, and for getting out the ballast; £1 for a pilot; 13*s.* 6*d.* for a new chart and for the repair of the compasses (the chart having been lost and the compasses damaged), and the rest for provisions and for clearing out the vessel. The owner had no agent at Swansea, which was about forty miles from Port Madoc. A letter sent from Swansea to the owner might have been answered in about four days. In an action by the lenders of the money against the owner, it was held that the jury were justified in finding a verdict for the lenders, on the ground that there was evidence that the money was necessary for the due and proper prosecution of the voyage, that

(*o*) *Johns* v. *Simons*, 2 Q. B. 425; and see *Stonehouse* v. *Gent*, *ibid.* 431 n.

(*p*) *Beldon* v. *Campbell*, 6 Ex. 886.

(*q*) *Arthur* v. *Barton*, 6 M. & W. 138; *Johns* v. *Simons*, 2 Q. B. 425; *Wallace* v. *Fielden*, 7 Moore P. C. 398, 409; *Beldon* v. *Campbell*, 6 Ex. 886, 890; Story on Agency, 119 a. Now that so many telegraph lines have been laid, there are fewer cases in which the master cannot communicate with the owner or his agents, and obtain an answer within a reasonable time. By 19 & 20 Vict. c. 97, s. 8, all ports within Great Britain and Ireland, the Channel Islands, and the islands adjacent, if part of the Queen's dominions, are to be deemed home ports in relation to the rights and remedies of persons having claims for repairs done, or supplies furnished to ships.

(*r*) 6 M. & W. 138; see per Patteson, J., *Johns* v. *Simons*, 2 Q. B. at p. 430.

it was required to be provided promptly, and that the master could not communicate with the owner without great prejudice and delay.

So, where a vessel had been a fortnight windbound at Newport, whilst her owner was residing at Exeter, one day's post from Newport, the master borrowed £5 from a broker, to enable him to purchase provisions necessary for the use of the ship; the Court held, that as it was necessary that the master should have been so provided as to be ready at once to take advantage of a change of wind, and as it would have required at least two days to have got the money from the owner, the jury were justified in inferring that there was such a reasonable necessity for borrowing the money as to render the owner liable for it, though there was no proof that the goods might not have been obtained by the master on credit.(*s*)

What Owners are made liable by the Master's Contracts.

Those owners for whom the master is agent, alone liable in his contracts.

§ 409. This question does not properly fall within the scope of this work, and therefore it is proposed to state only the leading principles.

The mere fact of a man being the legal owner of a ship does not give the master any authority to pledge his credit for necessary repairs or supplies; or to make him liable on any contract entered into by the master relating to the usual employment of the ship or otherwise.(*t*) For it must be borne in mind, that the master has no authority to pledge the credit of any particular owner for anything, unless such owner has expressly authorised him to do so, or has, by word or deed, held him out as his master, or allowed him to act as master with his, the owner's, consent, and thereby induced the person contracting with the master to believe that such person was so contracting upon the credit of such owner.(*x*) The owners who are liable, upon the master's orders and contracts, are those who really were his principals, when he gave the orders and made the contracts, or those who, by their conduct, have precluded themselves from denying that they were so.(*y*)

Effect of registration as evidence.

§ 410. The fact that an owner is the registered owner, is *primâ facie* evidence only that he was the employer of the master, and therefore liable for necessary repairs and supplies ordered by

(*s*) *Edwards* v. *Havill*, 14 C. B. 107.

(*t*) See per Bayley, J., *Briggs* v. *Wilkinson*, 7 B. & C. at p. 35; *Myers* v. *Willis*, 17 C. B. 77; 18 C. B. 886; *Mitcheson* v. *Oliver*, 5 E. & B. 419; *Hibbs* v. *Ross*, L. R. 1 Q. B. at p. 542; *The Great Eastern*, L. R. 2 Adm. 88; *Whitwell* v. *Perrin*, 4 C. B. N. S. at p. 416; and see *Frazer* v. *Cuthbertson*, 6 Q. B. D. 93.

(*x*) *Mitcheson* v. *Oliver*, 5 E. & B. at p. 444.

(*y*) *Hibbs* v. *Ross*, L. R. 1 Q. B. at p. 544.

the master. It is presumed in the absence of evidence to the contrary, that that from which he derives the benefit was done with his privity.(z) But circumstances may exist which show that such owner was not the employer, and that the contract was made with and the credit given to another, and not to the legal owner. All these facts as to such contract and credit are for the jury.(a)

Persons who are not liable.

§ 411. An owner, who has become such since the ship sailed, and who has not in any way recognised the agency of the master, is not bound as such, by contracts for necessaries made by the master abroad in his capacity as agent for the original owner; (b) nor is there any implication of law, that a master is authorised to pledge the credit of a mortgagee in possession for necessaries supplied to the ship.(c)

Mortgagees.

Minority owners.

Minority owners, who dissent from the employment of the ship by the majority, and have obtained bail for her safe return, bear no share in the expense of her outfit, the ship sailing wholly at the charge and risk of the majority.(d) So where the ship is let to charterers in such terms that the latter become owners *pro hâc vice*, the master has no authority to bind the legal owners by his contract.(e) And where by the terms of the charter-party the charterers are to provide and pay for certain articles of the ship's equipment, such as coals, the master has no authority to pledge the owner's credit, except, it seems, where such a proceeding is absolutely necessary in order to enable the ship to sail.(f)

Owners who have demised ship.

When the Master may sell the Ship.

Generally: sale may be authorised by necessity.

§ 412. In cases of extreme necessity, when the termination of the voyage has become hopeless, when nothing better can be done for the benefit of the owners, and when he cannot communicate with them within a reasonable time, the master, by virtue of his employment to do the best in his power for all concerned, may bind the owners by a sale of the ship for their benefit.(g) But

(z) *Frost* v. *Oliver*, 2 E. & B. 301; *Hibbs* v. *Ross*, L. R. 1 Q. B. 534, 542; per Bowen, L.J., *Frazer* v. *Cuthbertson*, 6 Q. B. D. 93. See, however, *Myers* v. *Willis*, 17 C. B. 77; 18 C. B. 886; the headnote of which case seems to go somewhat further than the judgments.

(a) *Frost* v. *Oliver*, 2 E. & B. 301; *Mitcheson* v. *Oliver*, 5 E. & B. 419, 446.

(b) *Mackenzie* v. *Pooley*, 11 Ex. 638; and see *Myers* v. *Willis*, *ubi sup.*

(c) *The Troubadour*, L. R. 1 Ad. 302, 306; per Sir R. Phillimore, *The Two Ellens*, L. R. 3 Ad. at p. 360.

(d) Abbott, 13th ed. 85. As to the right of co-owners to withdraw their authority at any time, see *The Vindobala*, 60 L. T. 657, 660, per Lord Esher, M.R.

(e) Abbott, 13th ed. 39, 58; *Frazer* v. *Marsh*, 13 East, 238; *Reeve* v. *Davis*, 1 A. & E. 312; *Meiklereid* v. *West*, 1 Q. B. D. 428; *Baumvoll, &c.*, v. *Gilchrest*, (1892) 1 Q. B. 253; (1893) A. C. 9.

(f) Per Sir J. Hannen, *The Turgot*, 11 P. D. at p. 24; and see *The Beeswing*, 53 L. T. 554.

(g) *Robertson* v. *Clarke*, 1 Bing. 445; *Read* v. *Bonham*, 3 B. & B. 147; *Idle* v. *Royal Exchange, &c., Co.*, 8 Taunt. 755, 772; *Hunter* v. *Parker*, 7 M. & W. 322; *The Uniao Vencedora* (otherwise *Gipsy*), 33 L. J. Ad. 195; *The Australia*, Swab. 480.

Sale may be authorised by necessity,

in the absence of such authority from the shipowners, he cannot do so unless there is an urgent necessity for the sale, and unless it is perfectly *bonâ fide*, and is for the benefit of all concerned.(*h*) The sale is not justifiable merely because it is *bonâ fide* and for the benefit of all concerned. Still less is the master at liberty to sell merely because he believes it to be advantageous to his owners to do so.(*i*) To justify his doing so, the necessity must be at least such as would induce a prudent man, if uninsured, to sell.(*k*) Only extreme necessity and the absence of all other means of serving the interests of the owners can justify him in resorting to an act which puts an end to his own functions and disposes of their property and profit.

But the necessity of the sale is not to be judged by what happens afterwards, for it may well be that an unusually high tide, or some other circumstance, which could not have been reasonably anticipated, when the master was forced to decide, may afterwards occur to save the ship or to make it possible to repair her.(*l*)

or adopted by ratification.

If the owner acquiesces in the sale, then, however unauthorised it was originally, it will be deemed to be ratified and rendered valid by such acquiescence.(*m*) Where, for example, the owner, with a knowledge of the facts, received the proceeds of the sale without objection, it was held that this was a ratification of the sale by him, and that he could not afterwards recover the ship back from the vendee.(*n*) But mere expressions of approval, or even the acceptance of the purchase-money, will not operate as a ratification, if the owner is at the time ignorant of the real facts relating to the sale.(*o*)

The master may also be expressly authorised to sell the ship; but if he is specially empowered to do so in a particular manner, his owners are not bound, if he exceeds his authority, and if the vendee knew that the master was specially authorised.(*p*)

(*h*) Per Lord Gifford, C.J., *Robertson* v. *Clarke*, 1 Bing. 450; per Lord Campbell, *Knight* v. *Faith*, 15 Q. B. 657; *The Segredo* (otherwise *Eliza Cornish*), 1 Spinks, E. & A. 36; *The Fanny and Elmira*, 1 Edw. 117, 119; *The Bonita*, Lush. 252.

(*i*) Per Dr. Lushington, *The Australia*, Swab. at p. 484.

(*k*) Per Tindal, C.J., *Somes* v. *Sugrue*, 4 Car. & P. at p. 284. This test is not conclusive, at any rate as regards insurers; in order that they may be bound by the sale, there must be stringent necessity: *Cobequid, &c., Co.* v. *Barteaux*, L. R. 6 P. C. 319. In the United States the rule is laid down thus: "If the circumstances are such, that if any master of ordinary skill and intelligence, carefully observing all the facts and weighing all probabilities, would be led to the conclusion, that an escape from destruction was but little more than possible, and that a delay sufficient to acquaint his owners with his condition and receive their instructions would in all probability cause a greater loss, he may then sell": 1 Parsons, Shipping, 71.

(*l*) Per Dr. Lushington, *The Bonita*, Lush. at p. 263; and see the American cases, 1 Parsons, Sh. 70.

(*m*) *The Australia*, Swa. 480.

(*n*) *Hunter* v. *Parker*, 7 M. & W. 322.

(*o*) *The Bonita*, Lush. 252.

(*p*) 2 Parsons, Sh. 8.

What constitutes necessity.

§ 413. To constitute a case of necessity, which would justify a sale, the following conditions must be fulfilled:(q)—(1) Either (a) impossibility of continuing the voyage at all;(r) or (b) impossibility of doing so save at a ruinous cost or a ruinous delay;(s) or (c) impossibility by any means, whether by bottomry or otherwise, of raising the funds or obtaining the credit necessary to enable her to continue her voyage, or of doing so at a rate not so extravagant as would deter a prudent uninsured owner from effecting such repair or rescue;(t) and (2) Impossibility of communicating with the owners within a reasonable time, or without exposing their property to very great risk.(u)

It follows that a case can hardly be conceived in which a master would be justified in selling at a port with which there is telegraphic communication; and that in no case should he do so until he has exhausted without success every means in his power, short of a ruinous expenditure, of rescuing the ship from her difficulties.(x).

Examples of necessity.

If, for example, the ship is a wreck, which cannot be got off,(y) or is not repairable;(z) or if, although her timbers hold together, she is in such a position that she cannot be repaired, except at an expense greatly exceeding her original value or her value when repaired;(a) or if the vessel is cast away on a foreign coast, or compelled to put into a distant port of distress, where there is no correspondent of the owners and no money to be had on hypothecation to put her in repair;(b) provided in every case that it is impossible to communicate with the owners, except with such a loss of time as would expose their property to imminent risk; if, in short, nothing better can be done for the interest of the owners, he may and he ought to sell the ship.

It follows from what has been said that a mere fear or doubt whether the expense of repairing would not exceed the value of the ship when repaired, or a mere difficulty in procuring funds,

(q) See the ingredients of "necessity" summarised by Dr. Lushington, *The Margaret Mitchell*, Swa. 382, 386.

(r) *Cambridge* v. *Anderton*, 2 B. & C. 691.

(s) *The Australia*, Swa. 480, 484; *The Uniao Vencedora* (otherwise *Gipsy*), 33 L. J. Ad. 195; *Mount* v. *Harrison*, 4 Bing. 388; *Somes* v. *Sugrue*, 4 C. & P. 276. A "ruinous" cost would seem to be a cost clearly exceeding the value of the ship when repaired or rescued: per Tindal, C.J., 4 C. & P. at p. 283; *Robertson* v. *Clarke*, 1 Bing. 445.

(t) *The Fanny and Elmira*, Edw. 117, 118; *The Australia, ubi sup.*; *Somes* v. *Sugrue, ubi sup.*; *The Segredo* (otherwise *Eliza Cornish*), 1 Sp. E. & A. 36, 48.

(u) *The Bonita*, Lush. 252; *The Fanny and Elmira, ubi sup.*

(x) See per Lord Ellenborough, C.J., *Hayman* v. *Molton*, 5 Esp. 65; *Cobequid, &c., Co.* v. *Barteaux*, L. R. 6, P. C. 319, where the question was whether the necessity was such that the sale would bind insurers.

(y) *Hayman* v. *Molton*, 5 Esp. 65; Abbott, 13th ed. 13, where the facts are more fully stated.

(z) *Ireland* v. *Thompson*, 4 C. B. 149; *Cambridge* v. *Anderton*, 2 B. & C. 691.

(a) *Robertson* v. *Clarke*, 1 Bing. 445; *Cambridge* v. *Anderton*, 2 B. & C. 691; *Thompson* v. *Colvin*, Ll. & Wels. 140.

(b) Per Lord Stowell, *The Fanny and Elmira*, Edw. 117; *Read* v. *Bonham*, 3 B. & B. 147; *The Margaret Mitchell*, Swa. 382; *The Glasgow*, Swa. 145.

Where ship retains her character as such, sale viewed with suspicion.

or materials, will not justify the master in selling.(*c*) And where the ship continues to retain the character of a ship, and to be capable of being used as such, with or without repairs, a sale is viewed by the Courts with suspicion, the master's duty being in general to proceed with the voyage if possible.(*d*) But the fact that the persons who purchased the ship were surveyors, who had been employed by the master to survey the ship, does not invalidate the sale, if the sale was absolutely necessary and perfectly *bonâ fide*.(*e*)

Incidental results of justifiable sale: it binds underwriters.

§ 414. A sale made by the master under circumstances of stringent necessity, but not otherwise, will not only bind the owners but will affect their underwriters with liability for a total loss.(*f*)

Does not defeat prior liens.

But such a sale, even when made under such necessity as to be binding on owners and underwriters, will not defeat prior mortgages or liens, whether arising out of bottomry, or otherwise.(*g*)

Authority to receive payment.

Where the master has justifiably sold the ship, he has, as incident to his authority to sell, authority to receive the proceeds, or to order them to be paid to such person as he may think fit. And a *bonâ fide* payment to him or his order is therefore a good payment.(*h*)

Sale under the directions of a foreign Court.

§ 415. The ship is sometimes sold, abroad or at home, under a decree of a Court of Admiralty. If this decree is obtained in a proceeding *in rem*, from a Court having competent jurisdiction in the matter, and acting *bonâ fide*, it is valid and binding upon all Courts and all parties.(*i*) And it has been held that, as a general rule, if personal property is disposed of in a foreign country, in a manner which is binding according to the law of the country in which it is, that disposition is binding everywhere.(*k*)

So that the innocent purchaser of a ship or of cargo, sold by the master abroad, under circumstances which do not give him, by the law of England, power to sell, may make a good title against the owners, if there was no fraud and if the sale was

(*c*) *Somes* v. *Sugrue*, 4 Car. & P. 276; Park, Ins. 365.

(*d*) Per Maule, J., *Ireland* v. *Thompson*, 4 C. B., at p. 168.

(*e*) *The Australia*, Swab. 480; see, however, *Hayman* v. *Molton*, 5 Esp. 65.

(*f*) Per Sir H. Keatinge, *Cobequid, &c., Co.* v. *Barteaux*, L. R. 6 P. C. 319; and see *Read* v. *Bonham*, 3 B. & B. 147; *Cambridge* v. *Anderton*, 2 B. & C. 691; *Knight* v. *Faith*, 15 Q. B. 649; *Thompson* v. *Colvin*, Ll. & Wels. 140; *Mount* v. *Harrison*, 4 Bing. 388.

(*g*) *The Catherine*, 15 Jur. 231; *The Nymph*, Swa. 86; *The Catharina*, 1 Pritch. Ad. Dig. (ed. 1887) 824. And see as to liens, *supra* § 74. It is otherwise of a sale under a decree *in rem* of a competent court, § 415 *inf.*

(*h*) *Ireland* v. *Thomson*, 4 C. B. 149.

(*i*) *The Tremont*, 1 W. Rob. 163; *The Attorney-General* v. *Norstedt*, 3 Price, 97; *The Helena*, 4 C. Rob. 3; *Castrique* v. *Imrie*, 8 C. B. N. S. 405; L. R. 4 H. L. 414; 1 Parsons, Sh. 74.

(*k*) Per Pollock, C.B., *Cammell* v. *Sewell*, 3 H. & N. 617; per Crompton, J., S. C. 5 H. & N. 744; per Bramwell, B., and Blackburn, J., *Castrique* v. *Imrie*, 8 C. B. N. S. 430; L. R. 4 H. L. 429.

directed by a Court, which had competent jurisdiction in the matter, and was so conducted as to pass the property by the law of the country where the subject matter was.(*l*)

Sale under directions of a foreign Court.

If the ship is sold in a foreign port, in a manner which is not binding by the law of that country, and which is not under the circumstances binding by the law of England, no title to the ship will pass to the vendee, and his title under such circumstances will not be strengthened merely by the fact of a foreign Court of Admiralty having decreed the sale upon the petition of the master.(*m*)

§ 416. Before selling, the master must, as we have seen, do all in his power to rescue the ship; and if she is capable of being repaired, do all in his power to obtain money for that purpose; and where practicable communicate with the owners.(*n*)

Master's duty before selling.

In the case of a ship which is insured, it is the duty of the master, before selling, to consult the agent of the underwriters, if there be one at the port of distress. And if there is a British consular agent there, the master should also consult him before selling.(*o*) It is his duty also before venturing to sell, to get faithful and accurate surveys taken of the actual position and condition of the ship.(*p*) But he cannot either shift his responsibility upon, or share it with others, however much he may fortify his own conclusions, by resorting to the advice of skilled and experienced men.(*q*) He should take care to make minutes of all the steps he takes to procure money and to bring the ship to sale, and to transmit copies of these to his owners with his report.

Whom to consult;

to get surveys taken,

Whether he proceeds to sell the ship, or to give orders for repairs, he should carefully ascertain the amount of the damage, which has resulted from recent perils of the sea; and of the damage, which is attributable to other and older causes; and he should carefully preserve, as far as he is able to do, for the satisfaction of all, whose interests may be affected by his acts, the evidence which will enable them to distinguish the one from the other, and to thereby adjust their respective losses.

and distinguish new from old damages.

The rule by which he should be guided, in any case of misfortune to his ship, is to do his best for the benefit of all concerned.

§ 417. When the validity of a sale of a ship is questioned by the owner, the burden of proving that the circumstances under

Burden of proving validity is on purchaser.

(*l*) *Cammell* v. *Sewell*, 3 H. & N. 617; 5 H. & N. 728; and see *supra* § 264.

(*m*) *Reid* v. *Darby*, 10 East, 143; *The Fanny and Elmira*, Edw. 117, 119; *The Warrior*, 2 Dods. 288, 293; *The Segredo*, 1 Sp. E. & A. 36, 57; cp. *Hunter* v. *Prinsep*, 10 East, 378; *Morris* v. *Robinson*, 3 B. & C. 196; *Cannan* v. *Meaburn*, 1 Bing. 243, relating to the sale of cargo.

(*n*) *Supra* § 413.

(*o*) *The Bonita*, Lush. 252, 263; *The Segredo*, 1 Sp. E. & A. 36, 53.

(*p*) *Hayman* v. *Molton*, 5 Esp. 65.

(*q*) *The Segredo*, 1 Sp. E. & A. 36.

which it took place were such as to make it binding on the owner is thrown upon the first purchaser from the master. It is, therefore, of the utmost importance to the purchaser that he should, before purchasing, ascertain the authority under which the master acts, or the circumstances which render a sale imperatively necessary; and he will not be released from this proof, except where the ship has been sold by a foreign Court of competent jurisdiction.(*r*)

(*r*) *The Australia*, Swa. 480; *The Glasgow* (otherwise *Ya Macraw*), Swa. 145; *The Bonita*, Lush. 252; see also *The Margaret Mitchell*, Swa. 382; *Ridgway* v. *Roberts*, 4 Hare, 106.

CHAPTER IX.

HYPOTHECATION.

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The Form, Contents, and Nature of the Contract.

What hypothecation is.

§ 418. It often happens that the ship is at a port at which the owners are unknown, and at which the master is a stranger; that necessities arise which are inexorable; and that the only hope of conducting the voyage to a favourable termination depends upon those necessities being promptly supplied. Under such circumstances as these, it has been the practice and law among maritime nations, probably since the time of the Romans, to permit the master to raise money, whereby to provide for the necessities of the ship, by giving a bond, pledging, or *hypothecating*, sometimes the ship and freight, and sometimes the cargo, by way of security to the lender, for the repayment of the principal sum advanced and maritime interest upon the same, if the ship shall arrive safe at the port of her destination.(*a*)

By this contract, the master binds himself in a penalty to repay the sum borrowed, and also professes to assign the ship, or the ship and freight, or the ship, freight, and cargo,(*b*) or any one of these, as the case may be, with a condition that the bond shall be void, if the money with the stipulated interest or premium be repaid within a certain time after the safe arrival of the ship at her port of destination.(*c*) It is of the essence of the contract

(*a*) 3 Kent Com., 164; per Lord Stowell, *The Atlas*, 2 Hagg. 48, 53 *et seq.*; *The Hero*, 2 Dods. 139; 2 Bl. Com. 457; Maclachlan, 4th Ed. 53.

(*b*) See *The Gratitudine*, 3 C. Rob. 240, 260 *et seq.*

(*c*) Maude and Poll., 4th ed. 560; *The Atlas, ubi sup.* Sometimes the hypothecation is effected by a deed poll, which is not in the form of a bond, and which is called a Bottomry Bill: 2 Park on Ins. 869.

that in the event of the ship being lost, the lender shall not be able to recover upon it.(*d*)

This species of contract was unknown to the Common Law of this country. It differs from a pledge or pawn, in that a pledge or pawn of a chattel is not valid, unless the article pledged is actually transferred to the possession of the pledgee,(*e*) whereas property hypothecated remains in the possession of the person who hypothecates it. It differs also from a mortgage, because a mortgage transfers the property, whereas hypothecation gives only a right to be enforced against the subject of it, through the medium of process.(*f*)

Bottomry.

§ 419. The contract of hypothecation is commonly called a bottomry bond; and this term is appropriate where the subject of it is the ship or freight, as the money is in that case borrowed on the security of the keel, or bottom of the ship. It is, however, not appropriate where the money is secured by hypothecation of the cargo only. In such a case the proper name of the transaction is *respondentia*.(*g*)

"Respondentia."

It was formerly laid down authoritatively that in the latter case, owing to the necessity of goods being sold or exchanged in the course of the voyage, "the borrower only is personally bound to answer the contract," and "recourse must, for the most part, be had to the person only of the borrower."(*h*) According to the modern view, however, the whole difference between respondentia and bottomry is that in bottomry the ship is hypothecated either alone, or along with the freight and cargo or one of them, while in respondentia the cargo alone is hypothecated.(*i*) Hypothecation of the cargo alone is, however, of very rare occurrence.(*k*)

Who may hypothecate. The master.

§ 420. The proper person to give the bond, at least in the absence of the owner,(*l*) is the master of the ship for whose necessities the money is required.(*m*) And a master, who is also part owner, has no greater power than a mere master to bind his co-owners by such a bond.(*n*)

In proper cases of urgent necessity, the bond may be given by the ostensible master, who is exercising all the functions of that situation,(*o*) even although he be not the registered master,(*p*)

(*d*) *The Atlas, ubi sup.; The Emancipation*, 1 W. Rob. 124, 130; *Stainbank* v. *Shepard*, 13 C. B. 418, 443–4.

(*e*) Maude & Pollock, 561; per Parke, B., *Stainbank* v. *Shepard*, 13 C. B. 418, 442.

(*f*) *Stainbank* v. *Shepard, ubi sup.*

(*g*) *The Cargo ex Sultan*, Swab. 504, 510; Maclachlan, 4th ed. 53.

(*h*) 2 Park, Ins. 869; Abbott, 13th ed. 154, 175; *Busk* v. *Fearon*, 4 East, 319.

(*i*) Per Dr. Lushington, *The Cargo ex Sultan*, Swab. 510.

(*k*) *The Atlas*, 2 Hagg. at p. 58; Abbott, 13th ed. 175. Instances occurred in *The Cargo ex Sultan*, Swab. 504; *La Constancia*, 4 N. of C. 285; and *The Cargo ex Galam*, B. & L. 167.

(*l*) See below.

(*m*) Per Lord Stowell, *The Jane*, 1 Dods. at p. 464.

(*n*) *The Orelia*, 3 Hagg. at p. 85.

(*o*) *The Jane*, 1 Dods. at p. 464.

(*p*) *The Orelia*, 3 Hagg. 75, 81.

and does not derive his authority to act as such from the owner;(q) and where the ship has lost her master by death, for example, or capture, a bond given by the mate,(r) or the British Consul at a foreign port,(rr) has been upheld.

Who may hypothecate.

A bottomry bond may be given in a foreign country for the necessities of the voyage, and without the concurrence of the master, by an owner who is on board the ship, and who cannot in any other way raise the necessary funds. And such a bond would, as in the case of ordinary bonds, supersede a former mortgage and even former bottomry bonds of the same species.(s)

The owner.

A master who has ceased to act, cannot, at any rate after the appointment of his successor, give a valid bond.(t)

§ 421. If the circumstances in which the ship is placed are such as to justify the giving a bond, it may be given to any person who is competent to contract, and who *bonâ fide* consents to provide the money, repairs, or supplies which are required for the necessities of the ship, upon the security of such bond. For example, the bond is not invalidated because it was given to an agent of the owner, if it is clear that the agent has not taken advantage of his character as such to obtain a bond which need not have been given.(u) If the agent has given the master fair notice that he will not make any further advances as agent, and has afforded him an opportunity of trying to get money elsewhere; and if the master is unable to do so, and is obliged to come back to the agent for a supply, the latter is fairly at liberty, like any other merchant, to advance the money on a security that is satisfactory to himself. It is no part of the agent's duty to advance money to the owners, without a fair expectation of being reimbursed.(x)

To whom a bottomry bond may be given.

Ship's agent.

But inasmuch as it is his duty as agent to protect the ship from all improper charges, a bond which is given to an agent will be examined by the Court with the utmost care, because in such a case the agent and lender are blended into one, and the owner is deprived of the protection he had a right to expect.(y)

A bond may equally be given, under proper circumstances, to the consignee of cargo at a foreign port, and is not invalidated by

Consignee of cargo.

(q) *The Kennersley Castle*, 3 Hagg. 1; *The Rubicon*, 3 Hagg. 9; *The Zodiac*, 1 Hagg. 320; *The Tartar*, 1 Hagg. 1.

(r) *Parmeter* v. *Todhunter*, 1 Camp. 541.

(rr) *The Cynthia*, 16 Jur. 748.

(s) *The Duke of Bedford*, 2 Hagg. 294, 304.

(t) 1 Parsons, Sh. 141.

(u) *The Royal Arch*, Swa. 269; *The Hero*, 2 Dods. 139; *The Lord Cochrane*, 2 W. Rob. 320, 331; *The Oriental*, 3 W. Rob. 243; 7 Moo. P. C. 398; *The Staffordshire*, L. R. 4 P. C. 194.

(x) Per Lord Stowell, 2 Dods. at p. 144; per Mellish, L.J., L. R. 4 P. C. at p. 204.

(y) Per Dr. Lushington, *The Royal Stuart*, 2 Spinks, 258, 260. As to what inquiries the lender on bottomry should make before he can safely take a bond, see *infra* § 442.

the fact that there is at the same port a consignee of the ship, if the necessary funds cannot be obtained from him;(z) nor by the fact that the consignee of cargo to whom the bond is given has under stress of necessity himself appointed the master who gives it.(a) So a bond has been upheld which was given to a merchant who having been left in charge of the ship by a former master when dying, appointed his successor, who afterwards gave the bond.(b)

Person who has appointed the master.

Person already under advances on personal credit.

A person, who has already advanced money to the master, upon the personal security of the owners, is not thereby disqualified from taking a bond if it is given for further advances made, not on mere personal security, but either on an express promise by the master that a bond shall be given, or on the security of his lien on the ship. If a bond be given to such a person, both for his previous advances on personal security, and also for further advances, it may be valid in regard to the latter, although it would be invalid in regard to the former.(c)

Owner's debtor cannot take bond.

But a valid bond cannot be given to a person, who, at the time he made the advance, in respect of which it is given, is indebted to the vessel or to her owners in respect of her. Such a person, before he can advance on bottomry and take a bond, is bound to discharge his debt.(d)

Nor person who knows ship has credit.

Nor can a valid bond be given to a person who knows that the master has at the port, either a general credit, or an empowered consignee, or an agent, who is willing to supply the master's wants. But it has been said that, if the money was advanced and the bond given, *bonâ fide* and in such ignorance of the ship's credit, as could not be removed by reasonable inquiry, the Court will endeavour to uphold the bond.(e) Nor is its validity affected by the fact that at the port where it was given a debt was due to the owners, if the master could not obtain payment of it.(f)

Nor part owner.

In America it has been held that a bond given to a part owner, which binds the shares of the other part owners for repairs with maritime interest, is not valid.(g)

§ 422. The contract of bottomry must be in writing,(h) but

(z) *The Nelson*, 1 Hagg. 169.

(a) *The Alexander*, 1 Dods. 278; *The Rubicon*, 3 Hagg. 9.

(b) *The Tartar*, 1 Hagg. 1.

(c) *The Augusta*, 1 Dods. 283; and see *The Osmanli*, 3 W. Rob. 198, 218.

(d) *The Hebe*, 2 W. Rob. 146, 150.

(e) Per Lord Stowell, *The Nelson*, 1 Hagg. at p. 176.

(f) *The Virgin*, 8 Peters, Adm. (Amer.), 538; Maclachlan, 4th ed. 56.

(g) 1 Parsons, Sh. 158.

(h) Per Lord Eldon, *Ex parte Halkett*, 19 Ves. 474; Marshall, Mar. Ins. 4th ed. 577. Mr. Maclachlan says (Merchant Sh. 1st ed. p. 160), "By the law of England, as settled for 200 years, it is a condition of valid bottomry in a foreign country, that it be effected by means of a duly executed instrument in writing. The ignorance of a foreign lender has, accordingly, never been allowed by the Court of Admiralty to cure the invalidity, in this respect, of his claim in the nature of bottomry on an English vessel, notwithstanding it may have been good and valid by the *lex loci contractus*, and by the general maritime law."

there is no settled form of contract, which it is necessary to pursue on these occasions. It may be set out in and evidenced by various forms of instruments.(*i*) Sometimes it is made in the form of a bond, sometimes in the form of a bill of sale, and sometimes in the form of a simple written agreement.(*j*) It is the creature of necessity and distress, and may be therefore expected to assume different shapes.(*k*) It may be executed under seal; and it may be executed upon land, if it was given in foreign parts in the course of a voyage.(*l*) But the ship cannot be hypothecated, either by parol, or by bills of exchange, drawn by the master on the owner, as a security for money advanced for the necessities of the ship, even although they are accompanied by a verbal agreement that the ship is to be liable.(*m*)

The form of the contract.

§ 423. In whatever form the contract is written or set out, it ought to show: The names of the master, the lender, and the borrower if other than the master; the occasion of the borrowing; the sum borrowed; the premium or interest to be paid for it; the ship; the voyage, with the duration of the risk, which the lender is to run; that the lender takes the maritime risk; and whether the money is lent on ship, freight, or cargo, or one or more of them.(*n*)

The contents of the contract.

Although a stipulation for the payment of interest or premium is not essential to the validity of the bond, the agreed rate (if any) should always appear on the face of the contract, or it cannot be recovered, as the written contract is the only evidence which is admissible to prove what premium was agreed upon.(*o*)

Premium.

It is essential to the validity of the contract, that the voyage should be described with reasonable accuracy in the instrument. This description must be such as to ascertain the nature and extent of the risk undertaken, so that, in case of deviation followed by total loss, the lender may be able, notwithstanding such loss, to secure the fruits of his venture.(*p*)

Voyage.

A bottomry bond may be valid whatever number of voyages the adventure may include, provided such voyages be in the legal or *de facto* contemplation of the owners;(*q*) and the risk may equally be undertaken for one stage only of a round voyage.(*r*)

(*i*) For forms of bond see Appx. No. 6, *infra*; and Abbott, 13th ed. pp. 1245–1247. See also *Broomfield* v. *Southern Ins. Co.*, L. R. 5 Ex. 192, and notes thereto.

(*j*) Abbott, 13th ed. 158; and see *The Elpis*, L. R. 4 Ad. 1; *The Heinrich Bjorn*, 10 P. D. 44.

(*k*) *The Kennersley Castle*, 3 Hagg. 1.

(*l*) *Menetone* v. *Gibbons*, 3 T. R. 267; *Johnson* v. *Shippen*, 2 Ld. Raym. 982.

(*m*) *Ex parte Halkett*, 3 Ves. & B. 135; 19 Ves. 474.

(*n*) Abbott, 13th ed. 158; Marshall, Mar. Ins. 4th ed. 577.

(*o*) *The Change*, Sw. 240; Maclachlan, 4th ed. 51; and see § 428 *inf.*

(*p*) *Western* v. *Wildy*, Skin. 152; *Williams* v. *Steadman*, Skin. 345; 2 Park, Ins. 901; Maclachlan, 4th ed. 61; *Anon.* 2 Ch. Ca. 130; 1 Parsons, Ins. 212; *The Jane*, 1 Dods. 461.

(*q*) *The Mary Ann*, 4 N. of C. 376, 381.

(*r*) *The Hero*, 2 Dods. 139.

But, in the case of a hired transport, when the voyage itself is not under the control of the party giving the bond, but liable to be changed at the discretion of the government, the bond would not be invalidated for the want of a particular description of the voyage; although, even in that case, the master ought to do all that lies in his power, and describe the voyage as nearly as he can.(*s*)

Maritime risk.

§ 424. It is also essential to the validity of the contract, that it should either appear on the face of the instrument, or be capable of being collected from its language, that the contract is founded on maritime risk; *i.e.*, that the money secured by the bond is payable to the person, to whom the bond is given, only in the event of the safe arrival of the ship at the port of her destination, and that all personal liability of the owners is excluded.(*t*)

Accordingly, where a respondentia bond was given to release cargo under arrest for salvage at a foreign port, and purported to charge not only that part of the cargo which was actually sent to its destination, but also the proceeds of a part which in consequence of a second disaster, and further salvage services had been sold, and its proceeds retained by the foreign court; the bond, though upheld as to the cargo sent home, was pronounced invalid as the proceeds in court, in respect of which no maritime risk was incurred.(*u*)

But it is sufficient if the maritime risk can be collected from the whole of the document taken together.(*x*) And it has been said, that the use of the term "bottomry implies sea risk."(*y*)

An authority given to the lenders to cover the amount advanced by insurance at cost of the borrowers, gives the lenders an equitable charge on the policies, and is inconsistent with the maritime risk,(*z*) at all events, unless that risk is undertaken in express terms.(*a*)

A low rate of interest throws suspicion on the nature of the instrument, as it is contrary to all probability that a merchant would advance money upon a ship and run the risk of the voyage, and yet receive no more than common interest, if the vessel per-

(*s*) *The Jane*, 1 Dods. 461. This principle would seem to apply to any case where the movements of the ship are at the discretion of time charterers.

(*t*) Per Lord Tenterden, C.J., *Simonds* v. *Hodgson*, 3 B. & Ad. 56; *The Atlas*, 2 Hagg. 48, 53; *The Nelson*, 1 Hagg. 169, 177; *The Emancipation*, 1 W. Rob. 124; *Stainbank* v. *Shepard*, 13 C. B. 418; *Stainbank* v. *Fenning*, 11 C. B. 51: *The Indomitable*, Swab. 446.

(*u*) *The Cargo ex Sultan*, Sw. 504.

(*x*) See note (*t*) *supra*.

(*y*) Per Dr. Lushington, *The Royal Arch*, Swab. at p. 281; *The Emancipation*, 1 W. Rob. at p. 130; *The Cecilie*, 4 P. D. 210.

(*z*) *The Heinrich Bjorn*, 10 P. D. 44, 50.

(*a*) See per Dr. Lushington, *The Indomitable*, Swab. at p. 452.

form her voyage in safety. But, if it can be collected from the bond, that sea risk is actually incurred, the bond will be supported, whatever amount of interest is agreed upon, and even in the absence of any agreement for interest at all.(*b*)

Bond may not bind owners personally, but may be taken as collateral security for bills of exchange.

§ 425. A document which binds the owners personally to payment in any event is not a contract of bottomry, and the lender has no insurable interest under it.(*c*) But although "the law forbids the creditor to have a direct remedy on *the bond itself* against the owner as well as the ship," there is no objection to a bottomry bond being given at the same time with, and as a collateral security for, bills of exchange drawn on the owner. In such a case if the bills are paid, the bottomry is discharged, and no maritime interest is payable on the arrival of the ship: if the bills are dishonoured, the bond is enforceable against the ship, for the full amount with the maritime interest, if any is agreed upon.(*d*)

The construction of the contract.

§ 426. As in the case of all written contracts, the meaning of the instrument and the intention of the parties to it can only be collected from its contents.(*e*)

Liberally construed.

Bottomry bonds, for the benefit of the shipowners, and the general advantage of commerce, are greatly favoured in Courts of Admiralty.(*f*) As they are usually given for money advanced in foreign ports, under circumstances of great necessity and distress, and contain the language of commercial men, and not of lawyers, they receive on the one hand a liberal construction;(*g*) while, on the other hand, as it is necessary that they should be limited to the necessity of the case, the transaction will be cautiously watched.(*h*)

But when once the transaction is proved to have been clearly of a bottomry character—*i.e.*, where the necessity is admitted or established, the want of personal credit beyond question, and the bond in all essentials apparently correct—then the strong presumption of law is in favour of its validity, and it will not be impugned, save when there is clear and conclusive evidence of fraud, or where it is proved beyond doubt, that, though purporting in form to be a bottomry transaction, the money was in truth advanced upon different considerations.(*i*)

(*b*) Per Dr. Lushington, *The Royal Arch*, Swab. at p. 281; *The Emancipation*, 1 W. Rob. at p. 130; *The Cecilie*, 4 P. D. 210; *The Laurel*, 11 Jur. N. S. 46.

(*c*) *Stainbank* v. *Fenning*, 11 C. B. 51; *Stainbank* v. *Shepard*, 13 C. B. 418.

(*d*) Per Cur., *Stainbank* v. *Shepard*, 13 C. B., pp. 443-4; *The Tartar*, 1 Hag. 1; *The St. Catherine*, 3 Hag. at p. 253; *The Emancipation*, *ubi sup.*; *The Ariadne*, 1 W. Rob. 411, 421; *The Lord Cochrane*, 2 W. Rob. 320, 336. In *The Staffordshire* (L. R. 4 P. C. 194) a bottomry bond was given as collateral security for a bill drawn on the mortgagee.

(*e*) *The Emancipation*, 1 W. Rob. 124, 128.

(*f*) *The Prince George*, 4 Moo. P. C 21, 28; *The Hero*, 2 Dods. 139, 140.

(*g*) *The Kennersley Castle*, 3 Hagg. 1; *The St. Catherine*, *ibid.* 250, 254; *Simonds* v. *Hodgson*, 3 B. & Ad. 50.

(*h*) *The Reliance*, 3 Hagg. 66, 74.

(*i*) Per Dr. Lushington, *The Vibilia*, 1 W. Rob. 5; *The Alexander*, 1 Dods. 278; *The Augusta*, 1 Dods. 283; *The Mary*

Bond may be good as to part, though bad as to residue.

§ 427. Acting on the principle of not scrutinising too closely the form of the contract, the Admiralty Court holds that a bond may be good in part though void for the remainder. Accordingly, in the case of a bond which purports to bind the owners personally as well as the ship, the vicious part may be rejected, and the bond enforced against the ship, if the vicious part is separable from the rest of the bond,(*k*) and provided the instrument is in other respects in strictness an hypothecation.(*l*) So the Court of Admiralty will support a bottomry bond, as to part of the debt secured by it, although the residue consist of items that cannot be secured by such a bond;(*m*) provided that part which is properly the subject of bottomry be substantial.(*n*)

Thus, where such a bond was given by the master, partly for advances to obtain his own discharge from arrest, and partly for payment of port dues and other disbursements necessary to enable the ship to prosecute her voyage, the Court sustained the bond to the extent of the sums advanced for necessary supplies and payment of port dues.(*o*)

And where a bond was given on ship and freight, and was made absolute on the arrival of the ship at a certain port—viz., Callao, and also attempted to hypothecate freight to be earned on a subsequent voyage, it was held that the bond was good *pro tanto* as to the ship, though void with respect to the subsequent freight.(*p*)

But if only a small proportion of the sum secured by the bond is properly a subject of bottomry, it is doubtful if the Court would support any part of the bond.(*q*)

Foreign bond not supported if does not comply with English law.

And the Court of Admiralty will not deal with a bond as a bond of bottomry or hypothecation, merely because it is so denominated in the foreign country where it was given, if it does not constitute such an instrument in this country.(*r*)

The rate of interest.

§ 428. The large interest reserved by a bottomry bond is commonly called *marine or maritime interest*. As the repayment of the principal advanced on bottomry is not certain, but dependent upon the safe accomplishment of the intended voyage, the lender was always entitled, even before the repeal of the usury laws,(*s*) to stipulate for a much higher rate of interest than the

Ann, 4 N. of C. 376, 379; *The Calypso*, 3 Hag., 162; *The St. Catherine*, *ibid.*, 250; *The Karnak*, L. R. 2 Ad. 289, 299, per Sir R. Phillimore.

(*k*) *The Tartar*, 1 Hagg. 1, 15; *The Nelson*, *ibid.*, 169, 176. For an example of a respondentia bond upheld in part, see *The Cargo ex Sultan*, Sw. 504.

(*l*) Per Cur., *Stainbank* v. *Fenning*, 11 C. B. 84.

(*m*) *The Augusta*, 1 Dods. 283; *The Prince George*, 4 Moo. P. C. 21; *The Heart of Oak*, 1 W. Rob. 204; *The Staffordshire*, L. R. 4 P. C. 194.

(*n*) *The Empire of Peace*, 39 L. J. Ad. 12.

(*o*) *The Prince George*, 4 Moo. P. C. 21; and see *The Osmanli*, 3 W. Rob. 198, 217 *et seq.*

(*p*) *The Staffordshire*, L. R. 4 P. C. 194.

(*q*) *The Osmanli*, 3 W. Rob. at p. 219.

(*r*) *The Atlas*, 2 Hag. 48, 55, 57, 58.

(*s*) 17 & 18 Vict. c. 90.

current or legal rate in ordinary transactions.(*t*) This higher rate was allowed him as "his *pretium pariculi*, his valuation of the danger to which he was exposed."

Excessive rate may be reduced.

But although a very high rate of interest will not affect the validity of the bond, the Court of Admiralty will reduce the rate, if it is excessive, or if it was obtained by fraud, or collusion, or extortion, but this jurisdiction will only be exercised with great caution and where clear cause is shown. This question, whether the rate is excessive, is for the consideration of the registrar and merchants.(*u*)

The mere fact that the premium or rate of interest stipulated for in the bond is very high, is not of itself a circumstance which affords any necessary inference of fraud.(*x*) On the contrary, as we have already shown,(*y*) when the question is, whether the bond was founded on maritime risk or not, the absence of a high rate of interest throws suspicion on the bond, and becomes an important element in determining its validity.(*z*)

Low rate suggests no maritime risk.

Maritime interest not allowed if risk not commenced,

If the ship never leaves the port where the bond was given, the risk never commences, and the ground for maritime interest fails. In an early case a Court of Equity under such circumstances decreed payment of it with ordinary interest only, and this course would probably be followed by the Admiralty Court, if similar circumstances were to arise.(*a*)

nor after it has ceased

And so, after the ship's safe arrival at her destination, the usual rate of interest only—viz., 4 per cent., in addition to the bottomry premium—is allowed in case of non-payment within the agreed time, and an agreement in the bond for a higher rate will not be sustained against cargo-owners who appear to resist it.(*b*) In the *Cecilie*,(*c*) interest at this rate was allowed from the date when the bond became due, though it contained no stipulation for interest at all.

Rate of interest left blank.

Where in a bottomry bond, blanks had been left, where the rate of interest ought to have been expressed, the Court of Admiralty pronounced for the bond with such interest as the Registrar should find to have been usual on such risks at the time when and place where the bond was taken.(*d*)

(*t*) 3 Kent's Com., 354; *The Atlas*, 2 Hag. 48, 57; *Sharpley* v. *Hurrell*, Cro. Jac. 208; 2 Park on Ins. 884; *The Cognac*, 2 Hag. 377, 387.

(*u*) *The Zodiac*, 1 Hag. 320, 326; *The Cognac*, 2 Hag. 377; *The Heart of Oak*, 1 W. Rob. 204, 215; *The Lord Cochrane*, 2 W. Rob. 320, 336; *The Huntley*, Lush. 24; *The Pontida*, 9 P. D. 102, 177.

(*x*) Per Sir W. Scott, *The Alexander*, 1 Dods. 279.

(*y*) See *supra* § 424.

(*z*) *The Emancipation*, 1 W. Rob. 124, 130; *The Laurel*, 11 Jur. N. S. 46, 48.

(*a*) *Deguilder* v. *Depeister*, 1 Vern. 263; 3 Kent's Com. 357; 1 Parsons, 164; Marshall, Mar. Ins. 590.

(*b*) *The D. H. Bills*, 4 Asp. 20, and note thereto; 4 P. D. 32 (*n*); *The Sophia Cook*, 4 P. D. 30.

(*c*) 4 P. D. 210.

(*d*) *The Change*, Swab. 240.

Under what Circumstances the Master may Hypothecate the Ship.

Necessity.

§ 429. Hypothecation is only valid when and so far as it is resorted to from necessity, which must be twofold: first, a necessity of obtaining supplies or repairs to enable the ship to prosecute the voyage; and secondly, an impossibility of obtaining those supplies or repairs in any other way than by hypothecation.(*e*) "Necessity" which will justify hypothecation has been defined as "a high degree of need—a need which arises when choice is to be made of one of several alternatives, under the peril of a severe loss if a wrong choice should be made." (*f*)

Elements of necessity.

If repairs, supplies, or advances are necessary for the completion of the voyage, or for the safety of the ship; if the master has no sufficient funds within his own control, and cannot obtain the necessary repairs, supplies, or advances from the owner's agent,(*g*) or upon his personal credit (*h*) or that of the owners,(*i*) and if he cannot communicate with the owners within such time as the urgency of the case admits, or cannot obtain adequate instructions from them, then such a necessity as would justify a bond exists; and then, and then only, he may obtain the necessary repairs, supplies, or advances by hypothecating the ship, freight, or cargo.(*k*)

How far absence of necessity invalidates bond.

The bond will in any case be void to the extent of any items which were not justified by necessity. The amount of these is matter for inquiry before the Registrar and merchants, after the bond has been pronounced for by the Court. But in the absence of reasonable inquiry on the part of the lender, the bond is void *ab initio*, and the Court will refuse to pronounce for it at all.(*l*)

Proof of this necessity is strictly required, partly as a protection to the owners, and partly for the protection of other creditors and mortgagees against a kind of claim which, though coming after, is preferred before theirs.(*m*)

Degree of necessity required.

The master can never be justified in giving a bottomry bond, except in cases where it is probable that his doing so will be beneficial to the shipowner.(*n*) But inasmuch as almost any

(*e*) *The Hersey*, 3 Hag. 404, 408. See also *The Prince of Saxe Cobourg, ibid.* 387; 3 Moo. P. C. 1; *The Nelson*, 1 Hag. 169, 175; and see *The Pontida*, 9 P. D. 102, 177.

(*f*) Per Sir Wm. Erle, *The Karnak*, L. R. 2 P. C. 512.

(*g*) *The Nelson*, 1 Hag. 169, 175; *The Prince of Saxe Cobourg*, 3 Hag. 387, 392; 3 Moo. P. C. 1; *The Reliance*, 3 Hag. 66.

(*h*) See *The Sydney Cove*, 2 Dods. 1, 7; *The Reliance*, 3 Hag. 66.

(*i*) *The Oriental*, 7 Moo. P. C. C. 398; *The Augusta*, 1 Dods. 283, 287.

(*k*) 3 Kent's Com., 172; Tudor's Merc. Cas. 3rd. ed. 71; *The Prince of Saxe Cobourg*, 3 Hag. 387, 392; 3 Moo. P. C. 1; *Lyall* v. *Hicks*, 27 Beav. 616; *The Faithful*, 31 L. J. Ad. 81.

(*l*) *The Pontida*, 9 P. D. 177, 180, explaining *The Prince of Saxe Cobourg*, 3 Moo. P. C. 1. See § 442 *infra*.

(*m*) Per Sir J. Nicholl, 3 Hag. 407; see *infra* § 460.

(*n*) Per Lord Stowell, *The Gratitudine*, 3 C. Rob. 240, 261.

alternative is better for the owner than the total loss of the ship and cargo, any combination of events which would prevent the completion of the voyage with profit, unless money were obtained by bottomry, would probably create such a necessity as to justify the master resorting to bottomry in order to raise the necessary funds, if he could not communicate with the owners, or raise the funds on personal credit.(*o*)

How far owner's consent dispenses with the proof of necessity.

§ 430. When the owner gives his express consent to a bond being given it is very strong *primâ facie* evidence that it was necessary to resort to this mode of raising money.(*p*) It is presumed that an owner would not so consent, unless it were to his interest to do so. But his consent is only *primâ facie* evidence of such necessity. And it has been held that it is not competent for the master, even with the consent of the owner, to grant a valid bottomry bond upon a British ship lying in a *British* port for a new voyage, because such a bond would, if valid, create a secret lien on the ship, without any sufficient necessity, and the consequence would be that subsequent *bonâ fide* mortgagees might be injuriously affected.(*q*)

Bond obtained by duress, void.

§ 431. If a bond is obtained from the master by *duress—i.e.*, by unlawful violence or imprisonment, or by the threat of such violence or imprisonment, it is void, even if the advances were made upon the promise of a future bond. But it does not necessarily follow, because the master was under duress or imprisonment at the time the bond was given, that the bond was obtained by duress. In order to render a bond so executed invalid, it must be shown that the whole of the transaction was compulsorily forced upon the master; for it must be remembered, that no bottomry bond of the master can be regarded as a purely voluntary transaction, inasmuch as his distress and necessities are the only grounds which justify him in giving such a bond at all.(*r*)

For what purposes master may give bond. To obtain necessary money, supplies or repairs.

§ 432. A bottomry bond may be given, in proper case of necessity,(*s*) to obtain money, supplies, or repairs, which are required either to enable the ship to prosecute her intended voyage;(*t*) or to return home, whether by a direct or by a circuitous voyage;(*u*) or to prosecute any voyage, which the

(*o*) See per Sir W. Erle, *The Karnak*, *ubi sup.*

(*p*) Tudor's Merc. Cas. 3rd. ed. 66; *The Royal Arch*, Swa. 269; *The Bonaparte*, 3 W. Rob. 298.

(*q*) *The Royal Arch*, Sw. 269, 276; per Holt, C.J., *Johnson* v. *Shippen*, 2 Lord Raym. 982; per Dr. Lushington, *The Helgoland*, Sw. 495.

(*r*) *The Heart of Oak*, 1 W. Rob. 204, 213; 1 Parsons, Sh. 169.

(*s*) *Supra* § 429.

(*t*) *The Karnak*, L. R. 2 Ad. 289; 2 P. C. 505. In case of capture, money may be raised on bottomry for ransom, if this is not prohibited by Order in Council, under 27 & 28 Vict. c. 25, s. 45; see *The Gratitudine*, 3 C. Rob. at p. 259.

(*u*) *The Edmond*, Lush. 57, 64; 1 Parsons, Sh. 142.

master has either express or implied authority to prosecute.(x) It is not essential to the validity of a bond that there should have been an actual advance of money before the bond was given. If the person to whom the bond is given had, on the promise that a bond should be given, pledged his credit to pay for the necessary supplies or repairs of the ship, the bond is good.(y)

To defray what charges.

All charges incurred at a foreign port, in respect of the ship or crew, from the time when the ship entered port, being necessary charges to enable the ship to proceed on her voyage, and being charges for which the owner or master, and not the consignee, is liable, are expenses to defray which a bottomry bond may be taken.(z)

Thus, expenses of discharging an outward cargo have been allowed in a bond for the homeward voyage; (a) and so of port dues and other like disbursements in a foreign port, payment of which was necessary to enable the ship to prosecute her voyage.(b)

So a bond may be given to raise money to pay salvage to recaptors for the release of the ship, where she has been captured and recaptured, and carried by the recaptors into a foreign port.(c)

But a valid bond cannot be given in a foreign port to secure payment of a general average contribution,(d) or of compensation for damage to, or non-delivery of, the outward cargo;(e) nor for charges in respect thereof, which should be borne by the consignee.(f) And it has been held in America that a bottomry bond cannot be given on the ship, to provide for the necessities or benefit of the cargo.(g) But this doctrine would seem not to apply where the benefit to the cargo is necessary, in order to enable the ship to earn the freight for its carriage.

Advances which can be, or have been, obtained on personal credit, cannot be secured by bond.

§ 433. A bond cannot be given for necessaries which can be obtained on the personal credit of the owners or master, or on a bill of exchange drawn by the master on the owners;(h) or for necessaries which have already been supplied on personal credit, and without any prior understanding that a bond should be given.(i)

(x) *The Royal Arch*, Sw. 269; 1 Parsons, Sh. 149; and see *The Tartar*, 1 Hag. 1, 13.

(y) *The Royal Arch*, Swab. 269.

(z) *The Edmond* (No. 2), Lush. 211, 220, per Dr. Lushington; *Dobson* v. *Lyall*, 8 Jur. 969.

(a) *The Edmond* (No. 2), Lush. 211.

(b) *The Prince George*, 4 Moo. P. C. 21.

(c) Per Lord Ellenborough, *Parmeter* v. *Todhunter*, 1 Camp. 541.

(d) *The North Star*, Lush. 45.

(e) *The Prince George*, *ubi sup.* See, however, § 434 *infra*.

(f) *The Edmond*, Lush. 57, 211.

(g) 1 Parsons, Sh. 142; *Fontaine* v. *Col. Ins. Co.*, 9 Johns. 29.

(h) *Stainbank* v. *Shepard*, 13 C. B. at p. 443.

(i) *The Augusta*, 1 Dods. 283, 287; *The Hero*, 2 Dods. 139, 147; *The Hersey*, 3 Hagg. 404, 412; 3 Moo. P. C. 79; *The Wave*, 15 Jur. 518; *The Empire of Peace*, 39 L. J. Ad. 12; *The Karnak*, L. R. 2 Adm. at p. 301.

But if necessary advances, supplies, or repairs have been furnished in pursuance of a prior agreement or understanding that a bond should be given, then a bond given to the creditor, after the advances were made, or the supplies or repairs furnished, will be valid.(*k*) And where small items secured by the bond were pointed out to the Court as having been expended before there was evidence of any negotiation for a bond, the Court held that those items might be fairly included in the sum secured by the bond, and that it might be presumed they were advanced in contemplation of such a security.(*l*)

Where advances on credit of the ship, bond upheld.

If it clearly appear that the necessities of the ship were supplied by the creditor, in reliance upon a lien for the debt, which the law of his country would give in the absence of express contract for the purpose, a bond subsequently given, being but a performance of the original intention, will be sustained.(*m*) And in the absence of evidence, the presumption is that the foreign lender made the advances in contemplation of a bottomry bond, and that therefore it is valid, and the presumption is increased where the *lex loci* empowers the lender to arrest the ship in satisfaction of his demand.(*n*)

§ 434. A bottomry bond cannot in general be given for a debt incurred, or in substitution for a bond given, on a former voyage.(*o*) But where the ship is in a foreign port, by the law of which she is subject to a lien and is liable to be arrested and sold to satisfy previous charges, and the master cannot otherwise raise the necessary funds, the general principle applies, that where the master cannot in any other way raise money which is indispensably necessary to enable the ship to continue her voyage, he may hypothecate the ship; and the nature of the charges for which the ship is liable to arrest seems to be immaterial.(*p*)

Bond may be given to release ship from *arrest*.

The Court, however, will inquire into the validity of the demand, in respect of which the right to arrest was claimed,(*q*) and will, it seems, discountenance an attempt to turn an unliquidated demand into a liquidated claim with a bottomry premium.(*r*)

Where a ship had been carried into a foreign port by a mutinous crew, with the master dispossessed and in irons, and expenses

(*k*) *The St. Catherine*, 3 Hag. 250; *The Laurel*, B. & L. 191, 196; *The Karnak*, L. R. 2 Adm. 289, 301.

(*l*) *The Prince George*, 4 Moo. P. C. 21, 28; *The Vibilia*, 1 W. Rob. 1, 8; *The Trident*, *ib.* 29, 34. The bond may be sustained in part, or rejected in part; see § 427 *supra*.

(*m*) *The Alexander*, 1 Dods. 278, 280; *The Vibilia*, 1 W. Rob. 1, 13; and see *The Gauntlet*, 3 W. Rob. 82, 96, 97; *The Laurel*, B. & L. 191; Maclachlan, 4th ed. 56.

(*n*) Per Sir R. Phillimore, *The Karnak*, L. R. 2 Adm. 301; on app. 2 P. C. 505.

(*o*) *The Royal Arch*, Sw. at p. 283; *The Toivo*, 1 Sp. E. & A. 185.

(*p*) Per Lord Campbell, *The Prince George*, 4 Moo. P. C. 25; and see *Dobson* v. *Lyall*, 8 Jur. 969; *The Edmond* (No. 2), Lush. 211; *The Karnak*, L. R. 2 Adm. at p. 307. See, however, *The Osmanli*, 3 W. Rob. 198.

(*q*) *The Ida*, L. R. 3 Ad. 542.

(*r*) *The Ida*, at p. 552. *Sed qu.* as to this; see note (*p*) *sup.*

had been incurred by a person employed by the British vice-consul in investigating into the mutiny and re-investing the master in his command, and the ship was liable to be detained till the expenses were paid, the master was held justified in giving a bond, although there had been no previous stipulation for one, inasmuch as no personal credit had been given to the master, as the expenses were incurred while there was no master in possession, and while the master was incompetent to do anything on her behalf.(*s*)

Semble: Mere threat of arrest will not justify bond.

§ 435. But it is said that it is too much to say that a mere threat to arrest the ship for a pre-existing debt would be a sufficient necessity to justify the master in giving a bottomry interest, since it might be an idle threat, which the creditor might never enforce, and until enforced the peril would not act upon the ship itself.(*t*)

Nor will arrest by person incapacitated from taking bond by breach of contract.

And where a foreign charterer arrested the ship at a foreign port, under process valid according to the law in force there, for unliquidated damages, which he claimed against her, for the non-delivery of cargo shipped by him, and the master, by the advice of the Consul, compromised the dispute, by giving to the charterer himself a bond for a sum considerably less than that claimed by him, it was held that the bond was invalid on the ground that the non-delivery was due to the failure of the charterer to receive the cargo, and on the further ground that the bond converted a personal debt into a bottomry transaction, and an unliquidated claim into a liquidated one with a bottomry premium.(*u*)

And it is said that a bond cannot be given by the master to release his vessel from arrest in a foreign port, on account of debts owing by the owner to his agent at such port, such debts having been incurred in former voyages.(*x*)

Bond for new voyage, if master has authority to undertake one.

§ 436. If a ship sails to a foreign port, with no other fixed or agreed voyage beyond such port, it being intended that the chance of the market shall be there taken for an advantageous freight, the master has, in such a case, if the proper necessity should arise, an implied authority to obtain the necessary supplies or repairs at the foreign port for a new voyage, by bottomry.(*y*)

But not for unauthorised purpose.

But he cannot hypothecate for any object which he has no express or implied authority to carry out. If, for instance, a new voyage is undertaken by the master, without any authority, either express, or to be inferred from the facts, then he has no authority to hypothecate for the purposes of such new voyage, and a bond,

(*s*) *The Gauntlet*, 3 W. Rob. 82.

(*t*) Per Mr. Justice Story, *The Aurora*, 1 Wheaton, 96; cited with approval in *The Ida*, L. R. 3 Adm. at p. 551.

(*u*) *The Ida*, L. R. 3 Adm. 542, 552; and see *The Lochiel*, 2 W. Rob. 34. But see notes (*p*), (*r*) *supra*.

(*x*) *The Osmanli*, 3 W. Rob. 198; *The Edmond*, Lush. 57, 65. See, however, *The Edmond* (No. 2), at p. 220; and per Sir R. Phillimore, *The Karnak*, L. R. 2 Ad. p. 305.

(*y*) *The Royal Arch*, Swa. 269, 278; *The Mary Ann*, 4 N. of C. 376, 381.

if given to a person who may be reasonably supposed to know that the master had no such authority, will be void.(z)

So a master, who has put into a foreign port of distress, has no authority to insure the ship and freight for performing the residue of the voyage, and has therefore no authority to give a bond in order to raise money for such purpose.(a)

And a bond cannot be given to raise funds to free or save the master only from arrest, or to satisfy any demand in respect of which he alone is liable to be arrested in a foreign country.(b)

In what ports the master may give a bond.

§ 437. Where the proper necessity exists, the master may hypothecate the ship, freight, and cargo in any port, whether it be a foreign port or a port of the country in which the owner of the ship resides, provided either the master is unable to communicate with or obtain instructions from the owners within a time commensurate with the necessities of the ship,(c) or the owners are unable to provide him with funds, and assent to the bond being given.(d) "The jurisdiction of the Court does not depend upon the mere locality of the residence of the owner," but "upon the absolute necessity of the case."(e)

And although, as we have seen,(f) it is not competent for the master, even with the consent of the owner, to grant a valid bottomry bond which could be enforced in the Admiralty Court upon a British ship, lying in a British port, for a new voyage; still, where a British subject purchases a ship in a foreign port, he may, if the proper necessity exists, raise the funds requisite to enable her to return home and make a new voyage.(g)

Before giving bond master must obtain personal credit if possible.

§ 438. Before the master can safely venture to hypothecate, it is imperative upon him to use every effort to obtain the necessary supplies or repairs on the personal credit of the owners or himself; for if it should afterwards appear that the shipowner had funds in the hands of his agent applicable to the needs of the ship,(h) or that, by the exercise of proper diligence, the supplies or repairs could have been obtained on personal credit, either from the ship's agent, or otherwise, the Court would pronounce the bond invalid,(i)

(z) *The Reliance*, 3 Hag. 66; *The Mary Ann, ubi sup.*

(a) *The Serafina*, B. & L. 277.

(b) *The Hersey*, 3 Hag. 404, 413; 3 Moo. P. C. 79; *The Prince George*, 4 Moo. P. C. C. 21, 28; *Dobson* v. *Lyall*, 8 Jur. 969.

(c) Per Sir W. Scott, *La Ysabel*, 1 Dods. 273; *The Trident*, 1 W. Rob. 29; *The Oriental*, 3 W. Rob. 243; 7 Moo. P. C. 398.

(d) *The Bonaparte*, 3 W. Rob. 298; 8 Moo. P. C. 459. By 19 & 20 Vict. c. 97, s. 8, "in relation to the rights and remedies of persons having claims for repairs done to, or supplies furnished to or for ships, every port within the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the dominions of Her Majesty, shall be deemed a home port;" and see the Act for Scotland, 19 & 20 Vict. c. 60, s. 18.

(e) Per Dr. Lushington, *The Trident*, 1 W. Rob. 31.

(f) *Supra* § 430.

(g) *The Helgoland*, Sw. 491.

(h) *Lyall* v. *Hicks*, 27 Beav. 616.

(i) *The Oriental*, 7 Moo. P. C. 398; per

at least in so far as the absence of necessity for it is established.(*j*)

Master must communicate with ship-owner if practicable.

§ 439. If the shipowner be on the spot, or so near that he can be reasonably communicated with, the master has no authority to hypothecate(*k*) without his express consent.(*l*) It is in all cases the duty of the master, before giving a bond, to communicate with the owners, if it be reasonably practicable(*m*) to do so, and to inform them of the ship's distress and of his intention to give a bond, so as to enable the owners, if possible, to advance the necessary funds or to raise them upon their personal security, and at an ordinary rate of interest. Failure to communicate with the owners, in any case where the existing necessity admits of his so doing, or in the words of the authorities, where the possibility of communicating corresponds with the existing necessity, will invalidate the bond.(*n*) Accordingly, where a master executed a bond at New York, without communicating with the owner, who resided at St. John's, New Brunswick (as he might have done by telegraph), the bond was declared void.(*o*)

In *The Panama* an owner in Liverpool chartered his ship to merchants there, and she got into difficulties and was obliged to put into Cardenas, in Cuba. The master tried to raise money there for necessary repairs, but found he could not do so. The charterer's agents in Cuba then telegraphed to the charterers in Liverpool to ask what they were to do. Neither the charterers nor the master communicated with the owner in Liverpool, who was in fact insolvent. But the charterers telegraphed to their agents to advance on bottomry, and this was done. It was held that the bond was invalid, for that under the circumstances of the case, the owner ought to have received notice, in order to have enabled him, if possible, to raise money for the purpose of rescuing his vessel from its difficulties, at a smaller rate of premium than the maritime premium reserved upon a bottomry bond would necessarily entail.(*p*)

Necessity of hypothecation must be communicated

The law requires that the communication should clearly bring to the attention of the owners of the property in question the necessity of hypothecation. It will not be sufficient if it only leave such fact to be inferred from the circumstances stated in it.

Sir John Nicholl, *The Prince of Saxe Cobourg*, 3 Hag. 392; per Cur. *Stainbank* v. *Fenning*, 11 C. B. at p. 88.

(*j*) *The Pontida*, 9 P. D. 102, 177.

(*k*) Per Sir R. Phillimore, *The Karnak*, L. R. 2 Ad. 300.

(*l*) See cases cited *supra* § 430.

(*m*) See *The Olivier*, Lush. 484; *The Panama*, L. R. 2 Adm. 390; L. R. 3 P. C. 203; *The Onward*, L. R. 4 Adm. 51.

(*n*) *The Oriental*, 7 Moo. P. C. 398; *The Bonaparte*, 3 W. Rob. 298; 8 Moo. P. C. 459; *The Royal Arch*, Swab. 275; *The Panama*, L. R. 2 Ad. 390; 3 P. C. 199; *The Onward*, L. R. 4 Ad. 38; *Kleinwort* v. *Cassa Maritima of Genoa*, 2 Ap. Ca. 156. The law of some foreign countries appears to be otherwise. See as to Italy, *The Gaetano and Maria*, 7 P. D. 1, 137.

(*o*) *The Oriental*, 7 Moo. P. C. C. 398.

(*p*) *The Panama*, L. R. 2 Adm. 390; L. R. 3 P. C. 199.

The owner should duly receive notice of the intention to raise money by bottomry.(q)

Necessity for communication how far affected by laches of owner of property.

§ 440. And it seems, that if a communication is necessary, and no proper communication is made, the absence of it cannot in general be excused on the ground of the laches of the owners of the property affected.(r) But neglect to reply to an application for advice and assistance may dispense with a further communication of intention to raise funds by hypothecation.(s) And so if the owners of the property were cognisant of the intention of the master to give a bond, and had the opportunity of interfering, but did not interfere, such conduct on their part would be an acquiescence in the master's proceedings, and would prevent them from afterwards objecting that they had not had a sufficient communication.(t)

Effect of insolvency or bankruptcy of owner on duty to communicate.

§ 441. And even where the owner is in insolvent circumstances (if he has not been made bankrupt), and the fact of his insolvency is known to the master, notice must notwithstanding be given by the master to the owner, wherever it is reasonably practicable to do so, before a valid bottomry bond can be given by the master.

If owner bankrupt his trustee must be communicated with.

But if the owner has been made bankrupt, then, as the ownership in his goods is in his trustee in bankruptcy, the notice must, when practicable, be given to him. For the trustee might think it would be more for the interest of the creditors that he should advance the money than that it should be raised at maritime interest.(u)

Lender's duty before he advances on security of bond.

§ 442. Before any one can safely venture to advance money, or to furnish supplies or repairs upon the security of a bottomry bond, he ought at his peril to satisfy himself by reasonable inquiry(x)—first, that the money, supplies, or repairs are wanted for the necessities of the ship, and that she would be unable safely to prosecute her voyage without them;(y) and secondly, that they cannot be procured on the personal credit of the owner, or master, or by advances on the freight, or upon any other credit than the hypothecation of the ship.(z) It seems also that the lender should satisfy himself that, if practicable, communication has been had with the owners, but without result.(a)

If the master borrows money for the necessary wants of the voyage, from a person who has the means of knowing that the

(q) *The Onward*, L. R. 4 Adm. 38, 54; *Kleinwort* v. *Cassa Maritima of Genoa, ubi sup.*

(r) *The Onward, ubi sup.*

(s) *The Bonaparte*, 8 Moo. P. C. 459; *The Onward*, L. R. 4 Adm. at p. 56.

(t) *The Lord Cochrane*, 2 W. Rob. at p. 333.

(u) *The Panama*, L. R. 2 Adm. 390; L. R. 3 P. C. 199; *supra* § 439.

(x) *The Eliza*, 1 Moo. P. C. 5; *The Prince of Saxe Cobourg*, 3 Moo. P. C. 1.

(y) *The Eliza*, 1 Moo. P. C. 5; *The Prince of Saxe Cobourg*, 3 Moo. P. C. 1; *The Orelia*, 3 Hag. 75, 84; *The Roderick Dhu*, Sw. 177, 183.

(z) Per Sir J. Nicholl, *The Hersey*, 3 Hag. 408; *The Faithful*, 31 L. J. Ad. 81; and see preceding note.

(a) Per Dr. Lushington, *The Olivier*, Lush. 492; *The Hamburg*, B. & L. 253, 276.

Lender's duty before he advances on security of bond.

master might obtain the necessary supplies on personal credit, a bottomry bond given to the lender would not be upheld, unless at least it were shown that he had exercised reasonable diligence to ascertain the fact.(*b*)

Presumption in favour of lender.

But the presumption is in favour of the lender, that he did make the proper inquiries, and that he was reasonably satisfied of the necessity. If the owner of the ship, freight, or cargo resists payment of the bond, the burden is upon him to prove the facts, which he alleges show that it is not valid.(*c*)

And the lender need make no further inquiries than those already indicated. To require more would be to impose dangers and restrictions upon bottomry transactions, which would be highly prejudicial to the interests of commerce. Therefore transactions between the owner and mortgagee of the ship, which might render the voyage a fraud on the mortgagee, cannot invalidate a bottomry bond given by a master to a *bonâ fide* lender.(*d*)

Necessity of items must be proved notwithstanding inquiry.

It has been said, that if the foreign merchant, after due inquiry, has reasonable ground for concluding that the circumstances justify the giving of a bond, then his security will not be invalidated, although it should turn out, notwithstanding such inquiry, either that the supplies or repairs were not necessary, or that they might have been obtained on personal credit.(*e*) But it is now laid down that although due inquiry is evidence of *bona fides*, in the bondholder, so that the Court will not pronounce the bond void *ab initio*, it will not dispense with proof of the actual necessity of each item included in the bond.(*f*)

Public advertisement will not dispense with inquiry by lender.

Even the sale by auction of a bottomry bond, pursuant to public advertisement, to the lowest bidder, in a foreign port, is not sufficient to discharge a purchaser of the bond from the necessity of making reasonable inquiries whether the master is under the circumstances justified in granting the bond.(*g*)

Not bound to calculate expediency of repairs,

§ 443. The lender of the money on bottomry is not bound to inquire into, or to satisfy himself of, the expediency, so far as the owner's interests are concerned, of incurring the proposed expenditure on the repairs, unless indeed they are so flagrantly inexpedient as to raise a presumption of fraud.(*h*)

nor to give notice to mortgagees.

Nor is a lender on bottomry under any obligation to communicate the existence of the bond to mortgagees of the ship; and the validity of his bond is not affected by the owner concealing it from the mortgagees.(*i*)

(*b*) *The Eliza*, 1 Moo. P. C. 5.

(*c*) *The Duke of Bedford*, 2 Hag. 294, 300; *The Vibilia*, 1 W. Rob. 1, 5; *The Mary Ann*, 4 N. of C. 376, 379.

(*d*) *The Mary Ann*, L. R. 1 Adm. 13.

(*e*) *The Prince of Saxe Cobourg*, 3 Moo. P. C. C. at p. 9.

(*f*) *The Pontida*, 9 P. D. 102, 177.

(*g*) *The Prince of Saxe Cobourg*, 3 Moo. P. C. C. 1.

(*h*) *The Vibilia*, 1 W. Rob. at p. 10; *Duncan* v. *Benson*, 1 Ex. 537, 555.

(*i*) *The Helgoland*, Swab. 491.

If there is no collusion, and if the lender has reasonable ground for believing that the money is fairly borrowed, he is not bound to see to its proper application. Nor is it any objection to a bond, that after it was given, the money obtained upon it was misapplied by the master;(*k*) unless, indeed, the lender is also the agent of the ship.(*l*)

Hypothecation of Freight.

He may hypothecate freight when he may hypothecate ship.

§ 444. If the bond hypothecates only the ship, the bondholder cannot, if the ship prove insufficient to satisfy the bond, resort to either the freight or to the cargo. If it hypothecates only the ship and freight, he cannot resort to the cargo.(*m*)

The master has exactly the same power of hypothecating the freight as he has of hypothecating the ship. Wherever he may hypothecate the one, he may hypothecate the other. The same circumstances are necessary to justify hypothecation in the one case as in the other. The freight may be hypothecated in the same way and by the same bond as the ship.(*n*)

A general hypothecation of the freight by the master in a foreign port includes all the freight at risk for the voyage for which advances are made, whether earned at the time the bond is made or not, not excepting freight earned by the charterers from sub-shippers,(*o*) but it does not include advances of freight, which had been *bonâ fide* paid to the master or owner, before the time of making the bond.(*p*) And where a ship on her outward voyage was chartered to load a cargo at Cuba for London, and the charter-party stipulated that the charterer's agent should make such advances at Cuba on account of freight as he might think the ship required, and the master gave a bond on ship and freight before the ship reached Cuba, the charterer's agent there having made advances in pursuance of the charter-party, it was held that inasmuch as the advances were made in pursuance of a prior agreement, which the charterer was bound to perform unless prevented by legal proceedings, he was entitled as against the bondholders deducting their amount from the gross freight.(*q*)

Freight to be earned on a subsequent voyage cannot be hypothecated.

Freight to be earned on a voyage subsequent to that for which advances are required, cannot be hypothecated; for, by the very nature of a bottomry bond, the person who takes it is to become subject to the maritime risk, and therefore nothing can be hypo-

(*k*) Per Lord Stowell, *The Jane*, 1 Dods. 461, 464, 465; Maclachlan, 4th ed. 154; and see the judgment of Story, J., in *The Fortitude*, 3 Sumner, 228.

(*l*) *The Royal Stuart*, 2 Spinks, E. & A. 258, 260.

(*m*) Marshall, Ins. 588; *The Constancia*, 4 N. of C. 285; 1 Parsons, Sh. 159.

(*n*) *The Augusta*, 1 Dods. 283; 1 Parsons, Sh. 159; Abbott, Sh. 13th ed. 152.

(*o*) *The Karnak*, L. R. 2 P. C. at p. 514; 1 Parsons, Sh. 159; *The Eliza*, 3 Hag. 87.

(*p*) *The Karnak*, L. R. 2 P. C. 505; *The John*, 3 W Rob. 170; *The Cynthia*, 16 Jur. 749.

(*q*) *The Standard*, Sw. 267.

thecated, except such things as are in danger of perishing by the maritime risk during the time the bond is running.(r) In an early case, however, where the shipowner had delivered the cargo and collected the hypothecated freight, and caused the ship to sail away before the arrival of the bottomry bond, so as to deprive the bond-holder of the opportunity of enforcing his security, it was held, but without laying down any general principle, that under the circumstances the bond-holder might enforce his security against freight earned on a subsequent voyage, no third party having become interested in it.(s)

Ship and freight contribute rateably.

If the ship and freight belong to different persons, and both are subject to a bottomry bond, the Court in liquidating the bond will see that each fund contributes *pro ratâ*.(t) And it would seem that the bond-holder ought not to be allowed to suffer by the goods being carried freight free.(u)

Hypothecation of the Cargo.

When the master may hypothecate the cargo,

§ 445. When the cargo alone is hypothecated, the instrument is properly called a respondentia bond;(x) the expression bottomry bond is, however, frequently employed where the instrument binds the cargo, whether alone or in addition to the ship and freight.(y)

The validity of a contract by the master hypothecating the cargo, the enforcement of it, and the instrument by which it is effected, are subject to conditions precisely similar to those which affect and regulate the contract of the hypothecation of the ship and freight.

In some cases the master may hypothecate the cargo as agent of the owners of the cargo, and in others as agent of the owners of the ship. But he may not repair the ship at the sole expense of and without reasonable probability of benefit to the cargo. For it must in all cases be remembered that the foundation of his authority to give a bottomry bond on cargo is the prospect of benefit, direct or indirect, to the owner of the cargo. This principle limits the authority of the master in this respect.(z)

as agent of owners of the cargo.

§ 446. We will first consider the cases in which he may hypothecate as agent of the owners of the cargo. As we have seen, the master is entrusted with the cargo for the purpose of

(r) *The Staffordshire*, L. R. 4 P. C. 194, 210.

(s) *The Jacob*, 4 C. Rob. 245. See this case discussed in *The Staffordshire*, *ubi sup.*

(t) *The Dowthorpe*, 2 W. Rob. 73, 81, 85.

(u) As to the effect of carrying goods freight free, see *The Gratitudine*, 3 C. Rob. 240, 278; *The Thyatira* (No. 1), 8 P. D. 155; S. C. (No. 2), 49 L. T. 713.

(x) § 419 *supra*. For form of such a bond, see *Cargo ex Sultan*, Swab. 510; and see Appendix, No. 6.

(y) Maude & Pollock, 4th ed. 561.

(z) Per Sir R. Phillimore, *The Onward*, L. R. 4 Adm. 38, 57, 58; *The Karnak*, L. R. 2 Ad. at p. 310; per Lord Stowell, *The Gratitudine*, 3 C. Rob. at p. 261.

conveying it safely to its port of destination, and this purpose he is bound to accomplish by every reasonable and practicable method. The character of agent for the cargo-owners is conferred and imposed upon him solely by the necessity of the case, and when it is not reasonably practicable for him to communicate with them and ask for their instructions.

When master may hypothecate the cargo as agent of owners of cargo.

In the event of disaster to the ship or cargo at a place where he cannot communicate with the cargo-owner, it is the master's duty to put himself in the place of the cargo-owner, and do, as nearly as he can, what the latter, as a prudent man, would himself do if he were present.(*a*)

Thus circumstances may be such as to render it expedient and necessary for the master, in order to promote the interests of the owners of the cargo, by preserving their property and furthering it to its port of destination, to raise money by hypothecating the cargo. In all such cases he has an implied authority to do so.

If, for example, a ship carrying cargo is stranded on a foreign coast and unable to proceed, and the cargo lies under arrest for salvage, and communication with its owners would be attended with greater delay and difficulty than the circumstances would allow, the master may, on his own authority, give a respondentia bond to release the cargo, in order to enable him to tranship it and send it on.(*b*)

§ 447. We will now consider in what cases the master may hypothecate the cargo as agent of the owners of the ship.

As agent of the ship-owners, whenever bottomry justified.

Whenever such necessity exists, as would justify the master in hypothecating the ship, he is authorised, provided, at any rate, that there is a reasonable probability that the cargo will be benefited by the expenditure, when the credit and property of the owners of the ship fail to yield him the requisite supplies, to have recourse to the cargo and to hypothecate a part or the whole of it.(*c*) Subsequent accidents may intervene to make the contract of hypothecation less beneficial than might have been expected at the time it was entered into. But such accidents will not invalidate the original contract.(*d*) If the necessity is proved, the title of the bondholder is unimpeachable, and the remedy of the proprietor of the cargo is against the owner of the ship at common law.(*e*) For persons who advance money on bottomry, whatever be the amount which they undertook to advance, and however they may look in the first instance to the value of the ship and freight, are fully entitled, if they think fit,

(*a*) *Supra* §§ 238, 239.
(*b*) *Cargo ex Sultan*, Swab. 504.
(*c*) *The Gratitudine*, 3 C. Rob. 240; *The Lord Cochrane*, 2 W. Rob. 320.
(*d*) Per Lord Stowell, *The Gratitudine*, 3 C. Rob. 265.
(*e*) See § 452 *infra*.

to demand the additional security of the cargo, and to bind all three under the obligation of the bond for the repayment of the money advanced.(*f*)

Master cannot authorise lender's agent to sell the cargo,

§ 448. But as the hypothecation is not a transfer of the property, but only a kind of pledge, the master has no right or power to undertake that the cargo shall be placed for sale in the hands of an agent of the lender and deprive the merchant of all opportunity of redeeming the pledge.(*g*)

nor give bond on cargo not shipped,

He cannot give a bottomry bond or cargo, which is not shipped, for he has no authority over the cargo, until it is put on board.(*h*)

nor to secure his personal remuneration.

In a bond given upon the cargo, to defray charges incurred in unshipping, storing, and transhipping the cargo at a foreign port, advances to the master for his services and personal expenses in taking care of the cargo there, will not be allowed, nor will the Court in such a case, whatever may be the custom of the port where the bond was given, allow as valid items any commissions beyond a reasonable amount.(*i*)

Duty to communicate with cargo-owners before hypothecation.

§ 449. It is a universal rule that the master of a British ship,(*k*) if in a state of distress or pressure, must, before hypothecating cargo, if reasonably practicable, communicate or attempt to communicate with the cargo-owners.(*l*) If it be rational to expect that if he communicates with the owners he may obtain an answer within a time not inconvenient with reference to the circumstances of the case, then it is the duty of the master, before hypothecating the cargo, to communicate, or at least to make the attempt,(*m*) informing the cargo-owners of the ship's distress and of the master's intention to give a bond,(*n*) and to await their instructions in reply; and this he must do for two purposes: first, to give the owner an opportunity of advancing the necessary funds, or of raising them on his own personal credit, and at an ordinary rate of interest, if he can do so; and secondly, to give him an opportunity of unlading the cargo altogether, if he thinks it expedient to do so.(*o*)

But where it is under the circumstances impracticable to com-

(*f*) *The Lord Cochrane*, 2 W. Rob. at p. 327.

(*g*) Maude & Poll. 4th ed. 568, citing *Johnson* v. *Greaves*, 2 Taunt. 344.

(*h*) *The Jonathan Goodhue*, Sw. 355; *The Edmond*, Lush. at p. 65.

(*i*) *The Glenmanna*, Lush. 115.

(*k*) It appears to be otherwise according to the law of some foreign countries. See as to Italy, *The Gaetano and Maria*, 7 P. D. 1, 137.

(*l*) *The Hamburg*, B. & L. 253; *The Bonaparte*, 8 Moo. P. C. 459; *The Oriental*, 7 Moo. P. C. 398; *Kleinwort* v. *Cassa Maritima of Genoa*, 2 Ap. Cas. 156.

(*m*) *The Hamburg*, B. & L. 253, 273; *The Bonaparte*, 8 Moo. P. C. 459, 473; *The Karnak*, L. R. 2 Ad. 289, 309; L. R. 2 P. C. 505. See also §§ 439–441.

(*n*) *Kleinwort* v. *Cassa Maritima of Genoa*, 2 Ap. Ca. 156; *The Onward*, L. R. 4 Ad. 38; *The Oriental*, 7 Moo. P. C. 398.

(*o*) Per Sir R. Phillimore, *The Lizzie*, L. R. 2 Ad. at p. 259; and see per Brett, L.J., *The Gaetano and Maria*, 7 P. D. at p. 144.

municate with the owners of the cargo, so as to receive an answer within a reasonable time, the master is entitled, if the requisite necessity exists, to hypothecate the cargo.(*p*)

Duty to communicate with cargo owners if practicable.

Examples

Thus, a ship sailed from Minatitlan, in January, 1866, with mahogany and cedar for the United Kingdom, and having suffered sea damage, put into Key West on February 27th, and there properly underwent some necessary repairs, which detained her until May 21st. The master, not being able to raise money on personal security, to defray the expenses of the repairs, gave a bottomry bond, dated the 19th of May, on the ship, freight, and cargo. The master did not, before hypothecating, communicate with the owner or consignees of the cargo, by reason of the great delay and uncertainty in the transmission of letters from Key West at that time. The vessel arrived at her destination on the 2nd of July. A suit having been commenced upon the bond, it was held that, under the circumstances, the master was not bound to communicate with the consignees of the cargo before hypothecating, and that the bond was therefore binding on the cargo.(*q*)

But where it appeared that a bottomry bond on ship and cargo had been granted by the master in Sweden, where the shipowners resided, and with their consent, and that it was under the circumstances practicable to communicate within a reasonable time with the owners of the cargo, who resided at Hull, it was held that in the absence of evidence of such communication the bond must be declared to be void, so far as the cargo was concerned. But, as it was afterwards shown, on further evidence being adduced, that the master had in fact informed the owners of the cargo of the injured state of the ship and sought their advice, and that they had sent no reply to his letter, the court sustained the bond against them.(*r*)

Cargo never liable for necessities of ship till ship and freight are exhausted.

§ 450. The usual form of a bottomry bond is upon ship, freight, and cargo.(*s*) When a bottomry bond given for the necessities of the ship includes the cargo, the cargo cannot be made subject to the payment of the bond until the proceeds of the ship and freight have been exhausted,(*t*) and this, whether the bond hypothecates ship, freight, and cargo in terms, or ship and cargo only.(*u*)

And even when the cargo alone has been hypothecated by a bond given for the necessities of the ship, the bond has the effect

(*p*) *Cargo ex Sultan*, Swab. 504; *The Olivier*, Lush. 484; *La Ysabel*, 1 Dods. 273.

(*q*) *The Lizzie*, L. R. 2 Ad. 254; and see *The Olivier*, Lush. 484.

(*r*) *The Bonaparte*, 3 W. Rob. 298; 8 Moo. P. C. C. 459.

(*s*) Per Sir R. Phillimore, *The Karnak*, L. R. 2 Ad. at p. 310.

(*t*) Per Dr. Lushington, *The Bonaparte*, 3 W. Rob. 302; *The Priscilla*, Lush. 1.

(*u*) *The Constancia*, 4 N. of C. 285; *The Prince Regent*, cited in *The Dowthorpe*, 2 W. Rob., pp. 83, 84; *The Priscilla*, Lush. 1, 3.

of virtually hypothecating the ship and freight, although not mentioned in it, for the Court of Admiralty will not allow the cargo to be resorted to for the ship, until the ship and freight have been exhausted.(x)

Conflicting bonds.

§ 451. And this principle will be followed even where it will have the effect of destroying the security of the holder of a bond on ship and freight only, over which a bond on ship, freight, and cargo has obtained priority.(y) Thus, where three bottomry bonds for the necessities of the ship were given, the first in date on ship and freight only, and the second and third on ship and cargo; and the ship and freight were sufficient to satisfy the two later bonds only; it was, nevertheless, held that the holders of the third, the last bond, which was entitled to priority, must be paid out of ship and freight.(z)

The rule was also applied in *The Constancia.*(a) In that case three bonds were given, the first on ship only, the second, of the same date, on cargo only, and the third, of a later date, on ship only. The value of the ship was not sufficient to satisfy the first and third bonds. It was held that the third was entitled to priority, and must be paid first out of the proceeds of the ship; and further, that the holder of the bond on cargo could not resort to the cargo until ship and freight had both been exhausted. But neither of the earlier bonds having priority over the other, the Court directed the whole of the proceeds of the ship remaining after payment of the third bond, to be applied in payment of the first, and the second bond to be paid in the first place out of freight, and as to the residue after the freight was exhausted, out of the cargo: applying the principle that where there are two creditors, one having a single, the other a double or treble security, it is the duty of the Court so to deal with the assets that both creditors may be paid.(b)

The ship and freight will be applied in satisfaction of such a bond, whether the bondholder on cargo desire it or not. It is a right which belongs to the owners of the cargo, against whom there is no claim, except for any deficiency which may remain after the application of the ship and freight to discharge the bottomry bond.(c)

Remedy of owners of cargo against owners of ship.

§ 452. In raising money for repairs of the ship upon bottomry, the master acts solely as agent of the shipowner.

(x) Per Lord Stowell, *The Gratitudine*, 3 C. Rob. 240, 264; *The Constancia*, 4 N. of C. 285; S. C. (No. 2), *ibid.* p. 515 *et seq.*; Marshall, Mar. Ins. 588.

(y) Bonds rank (according to the general rule of maritime liens) the later in time, the earlier in payment. See § 460 *infra.*

(z) *The Priscilla*, Lush. 1.

(a) 4 N. of C. 285, 288; *ibid.* 512.

(b) See also *The Mary Ann*, 9 Jur. 94.

(c) Marsh. Ins. 588; *The Constancia* (No. 2), 4 Notes of Cas. at p. 517.

"In ordering the repairs of the ship," says Patteson, J., in delivering the judgment of the Exchequer Chamber in the case of *Benson* v. *Duncan*, "the master acts exclusively as agent of the owner of the ship. No other person but the owner of the ship, or his agent, can have any authority to order the repairs. The owner of the cargo cannot insist on such repairs being made, for the shipowner is absolved from his contract to carry if prevented by the perils of the seas, and he is bound by it if prevented by inherent defects in the ship; in either case, if he does repair, he does so for the sake of earning freight, which the master is bound to enable him to do if he can. Being, then, the agent of the shipowner in ordering the repairs, how can he be the agent of any one else in borrowing money to pay for those repairs? If, in order to borrow that money, he is obliged to pledge not only the ship, but the cargo, he in effect borrows money on the cargo for the benefit of the shipowner."(*d*). The shipowner is consequently liable to indemnify the owner of the cargo for any loss which such a pledge of the cargo may cause him to suffer. And the cargo-owner, on his part, can therefore recover from the shipowner compensation for any loss, occasioned even by a necessary and justifiable hypothecation of the cargo for the repairs of the ship.

Thus, in the case from which the above passage is quoted, the master of a ship damaged by sea perils hypothecated by one bond at a foreign port, the ship, freight, and cargo for necessary repairs. On her return to this country, the ship and freight realised less than the sum advanced, so that the owner of a portion of the cargo was compelled to contribute towards the difference and also to pay his proportion of the costs of a suit instituted by the obligee of the bond in the Court of Admiralty. It was held that he might maintain an action against the owner of the ship on an implied promise to indemnify him against the consequences of the acts of the master.(*e*)

The Legal Effect and Operation of the Contract.

How it differs from mortgage or pledge.

§ 453. The contract of hypothecation or bottomry is, as we have shown,(*f*) distinguishable from a mortgage and from a pledge, in that it confers neither property nor possession, but only a right enforceable against the subject-matter through the medium of legal process, or, in other words, a maritime lien.(*g*)

(*d*) 3 Ex. at p. 656.
(*e*) *Duncan* v. *Benson*, 1 Ex. 537; in Cam. Scac., 3 Ex. 644.
(*f*) *Supra*, § 418.
(*g*) *The Tobago*, 5 C. Rob. at p. 222; *Stainbank* v. *Shepard*, 13 C. B. at p. 442.

Assignable in Admiralty.

Although, until the Judicature Acts came into force, a contract of this kind, technically called a chose in action, could not be assigned so as to enable the assignee to sue upon it in his own name,(*h*) yet in the Admiralty Court a bottomry bond has always been regarded as a negotiable interest, which may be transferred, and put in issue by the person who acquires it.(*i*)

Former Jurisdiction of Chancery Court.

Prior to the Judicature Acts, where there had been fraud, or where inquiries arose upon the bottomry contract, or equities attached to it, which could not be dealt with satisfactorily by the Court of Admiralty, the Court of Chancery would restrain proceedings upon the bond in the Court of Admiralty;(*k*) but now no proceeding in the High Court can be restrained by injunction, but every matter of equity on which an injunction might have been obtained, may be relied on by way of defence to an action on the bond.(*l*)

When bond becomes payable. On ship's safe arrival,

§ 454. As we have already seen, it is essential to the validity of the bond, that the money secured by it should in express terms be made payable, only upon the ship's safe arrival at her port of destination.(*m*) But no loss will have the effect of avoiding the contract, or of discharging the borrower, except a total loss, caused by the perils of the sea during the voyage and within the time specified in the contract.(*n*) Therefore, if the ship is captured, and afterwards restored to her owners, and so completes her voyage, the money is thereupon payable, for this is not a total loss, but only an interruption of the voyage.(*o*)

or when ship lost by default of master.

If the ship or cargo be lost, not by the perils of the sea, but by the default of the borrower or master, the bond becomes payable. "The lender," says Kent,(*p*) "who is in effect an insurer, does not, as in ordinary cases of insurance, assume the risk of barratry or loss by the fraud or misconduct of the borrower or his agents. And the doctrine of seaworthiness, deviation, and the necessity of diligence and correct conduct on the part of the borrower are equally applicable to this contract as to that of insurance. The lender is not to bear losses proceeding from the want of seaworthiness, or from unjustifiable deviation, or from the fault of the borrower, or the inherent infirmity of the cargo. Nor does he run the risk of the goods shipped on board another ship without necessity."(*q*)

When the bond becomes payable.

§ 455. The money advanced on a bottomry bond becomes due

(*h*) Abbott, 13th ed. 155.

(*i*) *The Rebecca*, 5 C. Rob. 102, 104; *The Prince of Saxe Cobourg*, 3 Hag. 387, 393.

(*k*) Maude & Poll. 4th ed. 577; *Glascott* v. *Lang*, 8 Sim. 358; 3 Myl. & Cr. 451; *Dobson v. Lyall, ib.* 453, n.; *Duncan* v. *McCalmont*, 3 Beav. 409.

(*l*) 36 & 37 Vict. c. 66, s. 24 (5).

(*m*) *Supra*, § 424; as to the importance of enforcing payment with diligence, see *The Royal Arch*, Sw. 269, and § 463, *infra*.

(*n*) Marshall, Ins. 594, § 457, *infra*.

(*o*) *Joyce* v. *Williamson*, 3 Doug. 164.

(*p*) 3 Kent, Com. 360; and see Marshall, *ubi sup.*

(*q*) 3 Kent, Com. 360; and see Marshall, *ubi sup.*

and payable to the lender, not only when the ship arrives in safety at her port of destination, but also whenever her voyage is broken up or terminated in any way whatever, as where she has sustained such damage as to be unable to continue it,(*r*) or where it is put an end to by the voluntary act of the master or owner; for instance, when the master sells the ship at an intermediate port.(*s*) In the latter case the bondholder may enforce his claim against the proceeds of the sale; and is not prevented from doing so by the fact that the ship has sustained such damage by sea perils as would, between assurers and assured, constitute a constructive total loss; provided she exist *in specie* at the time of the sale.(*t*) *A fortiori* the money is payable when the voyage agreed upon in the bond is abandoned by the borrower without the consent of the lender;(*u*) or when the ship is intentionally wrecked or lost by the master or owner.(*x*)

When voyage terminated by voluntary act of master.

So, if the ship be lost, after having deviated from the voyage stipulated for in the bond, the bondholder will be entitled to recover,(*z*) unless indeed the deviation were justifiable.(*a*) And it has been said that if the master, after setting out on the voyage, fraudulently neglects or refuses to proceed with the ship to the place to which she was destined, the bond becomes instantly due.(*b*)

When lost after deviation.

§ 456. If the vessel is lost, without the default or misconduct of master or owner, and a part of the property included in the bond is saved, the lender on bottomry is entitled, as between himself and the shipowners, or a mortgagee of the ship (whose rights are as much bound in bottomry as those of the owners), to the whole of what is saved, provided it was included in his security. The bond, as has been said, attaches to the very last plank, and the bondholder may have that sold for his benefit.(*c*)

Effect of loss of vessel without default.

His remedy is, however, in any case limited to the value of the property saved.(*c*) And where, after an agreement to hypothecate an entire cargo, part of it had been accidentally burned; part of it salved, and subsequently sold, and its proceeds, after payment of salvage, paid into the Registry of a foreign Court; and the residue transhipped to England; and a bond which purported

(*r*) *The Dante*, 2 W. Rob. 427.

(*s*) 1 Parsons, Sh. 137; per Sir R. Phillimore, *The Great Pacific*, L. R. 2 Adm. p. 384; affd. 2 P. C. 516; per Dr. Lushington, *The Catherine*, 15 Jur. p. 232; *The Brig Draco*, 2 Sumn. (U.S.), 157; cp. *Assecurazione, &c.* v. *Bessie Morris S.S. Co.*, (1892) 1 Q. B. 571, 576; 2 Q. B. 652.

(*t*) *The Great Pacific*, L. R. 2 Ad. 381; 2 P. C. 516; *The Elephanta*, 15 Jur. 1185. See also § 457, and note (*g*) thereto, *infra*.

(*u*) *The Helgoland*, Swab. 491, 499.

(*x*) 1 Parsons, Sh. 137.

(*z*) *Western* v. *Wildy*, Skin. 152; *Williams* v. *Steadman*, Skin. 345; *Anon.*, 2 Ch. Ca. 130.

(*a*) *The Armadillo*, 1 W. Rob. 251, 256–8.

(*b*) *The Armadillo*, 1 W. Rob., per Dr. Lushington at p. 255.

(*c*) Per Sir J. Colville, *The Great Pacific*, L. R. 2 P. C. p. 523.

to hypothecate the transhipped goods and the proceeds in the foreign Registry was pronounced invalid as to the latter; it was held that the goods which arrived in this country were only liable in the proportion of their value to the total value of the cargo upon which the bond had been agreed to be given, although the bondholder would still be a loser, even if the whole of the proceeds in the foreign Registry were paid over to him.(*d*)

Nothing but annihilation of thing hypothecated will do away with lender's claim.

§ 457. Nothing but an utter annihilation of the subject-matter, which has been hypothecated, will discharge the borrower on bottomry, so far as what is saved is concerned. There is not, in respect of this contract, any constructive total loss. The property saved, whatever it may be in amount, continues subject to the hypothecation. In the case of a loss of the ship, the lender can look only to what is saved; and if that be not equal to the value of the loan, the lender must bear the loss of the residue, and he cannot recover the deficiency from the borrower. If the voyage be disastrous, the lender is entitled to be paid out of the effects bottomried, which have been saved, so far, but only so far, as those effects go.(*e*)

If the ship still exists, although in such a state of damage, as to be a constructive total loss within the meaning of a policy of insurance,(*f*) or if she is captured and afterwards retaken and restored,(*g*) she is not lost in the sense attached to that word in the contract of hypothecation. If, therefore, an insurance has been effected by a lender on bottomry, upon the bottomry bond, he cannot recover against the underwriters, unless the bond has been lost by reason of the absolute total loss of the ship. If the ship exist in specie, though in a state which would warrant an assured on ship to abandon, it will not be such an absolute loss, within the meaning of the bottomry bond, as to discharge the bond, and to entitle the assured on bottomry to recover against the underwriters, for the ship must be absolutely and totally destroyed to discharge the borrower.(*h*)

§ 458. A contract of hypothecation, as we have seen, gives to

(*d*) *The Cargo ex Sultan*, Sw. 504; *sup.* § 424.

(*e*) 3 Kent, Com. 359; per Sir J. Colville, *The Great Pacific*, L. R. 2 P. C. at p. 522; *Thompson* v. *Royal Exchange Assurance Co.*, 1 M. & S. 30; *Broomfield* v. *Southern Insurance Co.*, L. R. 5 Ex. 192; *The Catherine*, 15 Jur. 231; *The Elephanta, ib.* 1185; Arnould on Ins., § 397.

(*f*) *Thompson* v. *Royal Exchange Assurance Co.*, 1 M. & S. 30.

(*g*) *Joyce* v. *Williamson*, 3 Doug. 164. It has been held in America that if the ship be captured, condemned, and sold, this is a loss of the ship, even though the proceeds are afterwards restored to the owner by decree, and that the owner holds the proceeds free from any claim of the bondholder (1 Parsons, Sh. 141; *Appleton* v. *Crowninshield*, 3 Mass. 443; diss. Sedgwick, J.); but it may be doubted whether this view would be followed in England. See *The Great Pacific* (L. R. 2 Ad. 381; 2 P. C. 516), where no doubt was suggested that the suit was properly brought against the proceeds.

(*h*) *Thompson* v. *Royal Exchange Assurance Co.*, 1 M. & S. 30; *Broomfield* v. *Southern Insurance Co.*, L. R. 5 Ex. 192; 1 Parsons, Sh. 151; *The Great Pacific*, L. R. 2 P. C. 516; Arnould on Ins., § 397.

the bondholder a maritime lien which can be enforced by a proceeding in rem, against the subject-matter of hypothecation, in the Admiralty Division of the High Court of Justice.(*i*) The jurisdiction of the Admiralty Court is founded upon and guided by the same principles, whether the ship, or freight, or cargo be hypothecated.(*k*) If the money is not repaid, with the interest reserved, within the time specified in the bond, the bondholder, whether the lender or his assignee,(*l*) may proceed against the ship, or against the ship, freight, and cargo, if they are all included in the bond, in the Admiralty Court,(*m*) or, in case of disaster terminating the voyage against any part of the property hypothecated that reaches its destination,(*n*) or against the proceeds of any part that is sold.(*o*) And the ship itself continues liable into whosesoever hands it may come.(*p*) The master is also liable to an action in personam, at any rate in all cases where he has bound himself personally by the bond.(*q*) But, as we have seen, the hypothecation does not render the owners of either the ship, freight, or cargo liable to be personally sued on the bond, either in a Court of Common Law, or in the Court of Admiralty.(*r*)

The bondholder's remedies: Maritime lien.

It is doubtful whether a demand arising out of such a contract can be made the subject of a set-off strictly so-called;(*s*) but this question is of less practical importance since the Judicature Acts.

Question whether bond can be set off.

Where a bottomry bond is given as security for an amount due for necessaries, &c., the claim for necessaries is merged in the bond, and the only contract which can be enforced is that arising out of the bond.(*t*)

Prior contract merged in bond.

§ 459. We have seen (*u*) that where a bond has been given upon cargo for the benefit of ship, the ship and freight form the primary, and the cargo only the secondary, fund out of which the bond is to be satisfied. If, therefore, the cargo is arrested, and bail given, further proceedings in regard to it should be suspended, until it is known that the primary fund is deficient.(*x*)

Claims against cargo should be suspended till ship and freight are found deficient.

§ 460. In the Admiralty Court, a bond is entitled to precedence over all other liens or claims, except wages which become due

(*i*) *Supra*, § 453; as to the meaning and effect of a "maritime lien," see further, §§ 74 *et seq.*, 80 *et seq.*, *supra*. The County Court has no jurisdiction to entertain a bottomry suit. *The Elpis*, L. R. 4 Ad. 1.

(*k*) *The Cargo ex Sultan*, Sw. 504, 510.

(*l*) *Supra*, § 453.

(*m*) *The Rhadamanthe*, 1 Dods. 201, 203; *The Atlas*, 2 Hag. 48.

(*n*) See §§ 456, 457, *supra*.

(*o*) *The Great Pacific*, L. R. 2 Ad. 381; 2 P. C. 516; *The Elephanta*, 15 Jur. 1185.

(*p*) Per Powell, J., *Trantor* v. *Watson*, 6 Mod. 13; *The Catherine*, 15 Jur. 231.

(*q*) Maude & Poll. 4th ed. 574; *The Jonathan Goodhue*, Sw. at p. 528; and see § 461, note (*n*), *infra*.

(*r*) *Johnson* v. *Shippen*, 2 Ld. Raym. 982; see § 425, *supra*.

(*s*) Abbott, 13th ed. 155.

(*t*) *The Elpis*, L. R. 4 Ad. 1.

(*u*) *Supra*, §§ 450, 451.

(*x*) *The Bonaparte*, 3 W. Rob. 298, 302.

Over what claims bond has precedence.

subsequently; or a subsequent bond; or a subsequent salvage claim;(z) or subsequent pilotage dues; or the claim of a successful suitor in a cause of damage, where the damage was done subsequently to the time when the bond was given.(a) The precedence of a bond given after the damage to effect repairs, over the damage lien, is limited, it seems, to the increase in the value of the vessel arising from the repairs.(a)

When there are several bonds, a later bond has priority over an earlier one.

Where two or more valid bottomry bonds have been given in the course of a voyage, for the repairs of the vessel, the rule is, that the bond last in date is entitled to be first paid, upon the principle that without the aid of the later bond, the property would be totally lost both to the owners and the earlier bondholders.(b)

Unless intended that they should be contemporaneous.

Where, however, different bondholders acting in privity and concert with each other, had advanced money upon the same general invitation, for the same repairs, in which all were equally interested, and upon the same terms, and where it had been intended that the bonds should bear the same date, none of the bondholders were allowed a priority merely because the bonds were of different dates, but all were paid *pro ratâ* and without any preference.(c)

Mortgagee or purchaser postponed to bondholder during the contemplated voyage.

The same reasoning which gives priority to a later bond gives the bondholder priority over a previous mortgagee.(d) And indeed the bondholder is entitled, during the voyage for which the bond was executed, to priority of payment over any mortgagee, for when money is advanced on mortgage of a ship, the mortgagee takes his security subject to all legal liens; and if he suffers therefrom, his only remedy must be against the owners.(e) And in like manner, in the absence of laches on the part of the bondholder, his lien will be upheld against a *bonâ fide* purchaser, without notice of the bond.(f)

Seamen's wages.

§ 461. It has been doubted whether wages earned prior to the date of the bond in any case took precedence of it.(g) The rule, however, seems to be that the bondholder yields priority to the seaman claiming wages earned on the voyage for which the bond was given, whether before or after the date of the bond,(h) or on any subsequent voyage;(i) but that, during the voyage for which it was given, the bond takes precedence of all wages

(z) Per Sir J. Nicholl, *The Orelia*, 3 Hagg. at p. 83; and see succeeding notes.

(a) *The Aline*, 1 W. Rob. 111. See § 639, *infra*.

(b) *The Rhadamanthe*, 1 Dods. 201, 204; *The Eliza*, 3 Hag. 87; *The Sydney Cove*, 2 Dods. 1; *The Betsy*, 1 Dods. 289; *The Constancia*, 4 N. of C. 285, 512.

(c) *The Exeter*, 1 C. Rob. 173.

(d) *The Duke of Bedford*, 2 Hag. 294.

(e) *The Royal Arch*, Swab. 269 282.

(f) Note (p), *supra*.

(g) *The Janet Wilson*, Swab. 261.

(h) *The Madonna d'Idra*, 1 Dods. 37; *The Sydney Cove*, 2 Dods. 13; *The Constancia*, 4 N. of C. 512; *The William F. Safford*, Lush. 69; *The Union*, Lush. 128; as to the seamen's remedies for wages, see § 509 *et seq.*, *infra*.

(i) *The Hope*, 28 L. T. 287. In a proper case the Court will order the discharge of the seamen, on the motion of the bondholder, authorising the latter to pay them their wages out of freight in his hands: *The Bridgwater*, 37 L. T. 366

earned on any prior voyages.(*k*) Pilotage dues appear to rest on the same footing as wages.(*l*) Pilotage.

The claim of a master for his wages and disbursements differs in no respect as regards its ranking against a bottomry bond, from that of seaman,(*m*) unless, as is usually the case, the master has bound himself personally to pay the bond. Master's wages and disbursements.

In the latter case it would be manifestly wrong that, in defeasance of his own contract, he should not only not pay the bond himself, but obtain out of the proceeds of the ship and freight payment of his own claims against the owners, leaving the bottomry bondholder unpaid. Hence it is a general rule, that the holder of a bond, upon which the master has made himself personally liable, is paid out of the proceeds of ship and freight before the master.(*n*)

But this rule is not extended to cases where the bottomry bondholder would not be prejudiced by the master being paid before him. Therefore, where a master gave bonds on ship, freight, and cargo, binding himself, and the bonds, if paid first, would exhaust ship and freight and so defeat the master's claim; while, if the master's claim were first paid, the cargo would afford ample security to the bondholder; it was held that the master's claim should have priority over the claims of the bondholders.(*o*) And the owners of cargo cannot in such a case oppose the claim of the master, even if he is also a part owner, to be paid his wages and disbursements in priority to the bondholder; nor will the Court entertain a counterclaim by the cargo-owner against the master.(*p*) Assets marshalled in master's favour.

§ 462. The lien for salvage services rendered subsequently to the giving of the bond, is preferred to that of the bondholder,(*q*) though it is otherwise with prior salvage.(*r*) And where after a respondentia bond had been given, the goods were reshipped, freight was earned, and general average expenses were incurred, without notice of the bond, but necessarily, as well in the interests of the bondholder as of the cargo-owner, the possessory lien of the master of the substituted ship for freight and general average Salvage.

(*k*) *The Hope*, 28 L. T. 287; *The Mary Ann*, 9 Jur. 94, 95. The question whether wages were earned on one round voyage or a series of voyages is, as between bondholder and seamen, governed by the articles. *The Sylvia Sonto*, Cor. Sir F. Jeune, Adm. Div., June 19, 1893.

(*l*) *The Constancia*, 4 N. of C. 512; *The St. Lawrence*, 5 P. D. 250.

(*m*) *The Hope*, 28 L. T. 287; see, as to his wages, 17 & 18 Vict. c. 104, s. 191; as to his disbursements, 52 & 53 Vict. c. 46, s. 1; § 69 *et seq.*, *supra*.

(*n*) Per Dr. Lushington, *The Edward Oliver*, L. R. 1 Ad. 379, 383; *The Jonathan Goodhue*, Sw. 524; *The William*, *ib.* 346; *The Sylvia Sonto*, cited, note (*k*) *sup.*

(*o*) *The Edward Oliver*, L. R. 1 Ad. 379. And even if the owner of the cargo purchases the bonds, that does not affect the rights of the master, or put the owner of the cargo in a better position: *The Eugenie*, L. R. 4 Ad. 123.

(*p*) *The Daring*, L. R. 2 Ad. 260.

(*q*) *The Cargo ex Galam*, B. & L. 167, 181; cp. *The Cargo ex Sultan*, Sw. 504.

(*r*) *The Selina*, 2 N. of C. 18.

expenses, was preferred to the maritime lien of the bondholder, on the ground that the services rendered were in the nature of salvage services.(s)

Claims which confer no maritime lien.

The claim of a bottomry bondholder will take precedence during the voyage for which the bond was given of claims for such services as towage, and the supply of necessaries, which confer no maritime lien;(t) and will, as it seems, be preferred to that of a shipwright with a possessory lien on the ship, if he received her into his yard after the bondholder's claim was complete and due.(u) If, however, his services were necessary to the realisation of the bondholder's security, they would perhaps fall within the principles of *The Cargo ex Galam*,(x) as being in the nature of salvage services.

Bondholder must enforce his claim with diligence.

§ 463. But it must be remembered that the priority of a bondholder over other creditors only exists in ordinary cases during the voyage for which the bond was executed, and for a reasonable time after the arrival of the ship at her port of destination. A holder should therefore enforce his rights under the bond within a reasonable time after the ship has arrived at her port of destination, or he may lose his precedence over other creditors, or purchasers without notice of his claim. For the law discountenances the undue continuance of secret liens.(y) If he agrees that the payment shall be postponed until the completion of another voyage, his security under the bond and his right of proceeding in the Court of Admiralty cease, and the rights of the parties are then of a mere personal nature.(y)

By the law of what country the contract is governed.

§ 464. The rights of the parties to a contract are to be judged of by the law of that country by which they intended that the transaction should be governed, or, rather, to which they may justly be presumed to have submitted themselves.

In ordinary cases, the law of the place where the contract is made is, *primâ facie*, that which the parties intended, or ought to be presumed to have adopted as the footing upon which they dealt, and such law ought therefore to prevail in the absence of circumstances indicating a different intention, as, for instance, that the contract is to be entirely performed elsewhere, or that the subject-matter is immovable property situated in another country, and so forth.(z)

Where parties enter into a contract in one country to be performed in another country, the general rule is that such contract

(s) *The Cargo ex Galam*, *ubi sup.*

(t) See as to towage, *Westrup* v. *Great Yarmouth, &c., Co.*, 43 Ch. D. 241; as to necessaries, *The Heinrich Bjorn*, 10 P. D. 44; 11 Ap. Ca. 270.

(u) See *The Gustaf*, Lush. 506.

(x) B. & L. 167.

(y) *The Royal Arch*, Swab. 269, 285; *The Rebecca*, 5 C. Rob. 102; cp. *The Sydney Cove*, 2 Dods. 1, 10; and disting. *The Hero*, 2 Dods. 139, 143, where, however, no third party was affected.

(z) See per Willes, J., *Lloyd* v. *Guibert*, L. R. 1 Q. B., pp. 120, 122.

will, as to its validity, nature, obligation, and interpretation, be governed by the law of the place of performance.(*a*)

Law of the flag.

Upon this principle "he who ships goods upon a foreign ship ships them to be dealt with by the master of that ship, according to the law of the country of that ship, unless there is a stipulation to the contrary."(*b*) In other words, where the contract of carriage does not provide otherwise, the law of the country to which the ship belongs must be taken as that to which the parties have submitted themselves. Accordingly, the validity of a bond hypothecating cargo must be determined, in the absence of some special stipulation in the contract of carriage, by the law of the flag.(*c*) But in the absence of evidence that the law of the flag differs from the law of England, the law of England will be followed by the courts of this country. They will also follow their own rules on all questions of evidence and procedure.(*d*)

"As far as regards the implied authority of the master of a ship to bind his owners personally," says Blackburn, J., "the flag of the ship is notice to all the world that the master's authority is such as is conferred by the law of that flag; and that his authority from his owner is contained in the law of that country, with which those who deal with him must make themselves acquainted at their peril."(*e*)

(*a*) Story, Conflict of Laws, 280; per Lord Mansfield, C.J., *Robinson* v. *Bland*, 2 Burr. 1078; *Burgess* v. *Richardson*, 29 Beav. 487, 494; Tudor, Merc. Cas. 3rd ed. 643.

(*b*) Per Brett, L.J., *The Gaetano and Maria*, 7 P. D. at p. 146.

(*c*) *The Gaetano and Maria*, 7 P. D. 137, not following *The Hamburg*, B. & L. 253; *Lloyd* v. *Guibert*, 6 B. & S. 100, 120; L. R. 1Q. B. 115; *The Karnak*, L. R. 2 P. C. 505; see also *In re The Missouri, &c., Co.*, 42 Ch. D. 321; *The August*, (1891) P. 328; and cp. *The Industrie*, C. A., Nov. 28, 1893.

(*d*) *The Hamburg*, B. & L. 253, as explained by Brett, L.J., 7 P. D. at p. 147, and by Willes, J., L. R. 1 Q. B. at p. 125.

(*e*) See *Lloyd* v. *Guibert*, 6 B. & S. at p. 117.

CHAPTER X.

THE CREW.

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Seamen: How regarded and Protected by the Law.

In general.

§ 465. SEAMEN (*a*) are so liable, from their mode of life, their want of experience, and their insufficient education, to become the victims of ignorance and simplicity, that the law takes them under its especial protection, and the Court of Admiralty always sought to protect them against circumvention, oppression and injustice, and even against misapprehension and error,(*b*) and was anxious that they should not be harassed with litigation, and that questions of wages should be speedily settled.(*c*) In a suit

(*a*) The term "seaman," when used in the Merchant Shipping Acts, includes "every person (except masters, pilots, and apprentices, duly indentured and registered) employed or engaged in any capacity on board any ship," 17 & 18 Vict. c. 104, s. 2. As to this definition, see per Lord Coleridge, C.J., *R.* v. *Judge of City of London Court* (*The Michigan*), 25 Q. B. D. at p. 342. The term "crew" has in some respects a wider meaning, and "includes the whole of the ship's company, except the master," Maude & P. 4th ed. 162.

(*b*) See per Lord Stowell, *The Hoghton*, 3 Hag. at p. 112; *The Minerva*, 1 Hag. at p. 358; cp. *The Annie Sherwood*, 12 L. T. N. S. 582.

(*c*) Per Sir J. Nicholl, *The Prince George*, 3 Hag. at p. 377.

for wages, the Court presumes service and good conduct, until they are disproved.(*d*)

Officers were the objects of as much attention from the Court as common mariners, inasmuch as any injury done to their character is attended with consequences of a more serious nature. The latter if distressed in one service, may easily obtain another. But if an officer is discharged for inefficiency, he is in danger of losing, not only his present character and position, but also his prospects of promotion.(*e*)

The rights of seamen are now defined and enforced by express enactments, the more important of which are set out hereafter; but irrespective of statute, the obedience and skill of the seamen entitle them to remuneration, protection, humane and just treatment, proper food if it is procurable, and care in the event of sickness.(*f*)

Rights of seamen as regards seaworthiness of ship.

§ 466. In one most serious respect, however, the English law long afforded to the seaman no adequate protection. For the law created no implied warranty on the part of a shipowner when contracting with a seaman to serve on board his ship, that she should be in a fit state to perform her voyage, and in the absence of an express warranty to that effect, the seaman could maintain no action for injury resulting to him from unseaworthiness, unless he could establish knowledge of the defect, or personal blame on the part of the shipowner.(*g*)

But, although even now there is no implied warranty by the shipowner in his contract with the seamen that the ship is in fact seaworthy, an obligation is implied in every contract of sea service, that the owner and his agents shall use all reasonable means to insure the continued seaworthiness of the ship.(*h*) Provision has also been made for the survey of ships alleged to be unseaworthy, for the prevention of overloading, and for the detention in certain cases of ships believed to be unsafe, by the officers of the Board of Trade.(*i*)

Excluded from Employers' Liability Act.

§ 467. Seamen also suffer from a serious disability, as compared with workmen employed on shore, in that they are excluded from the advantages of the "Employers' Liability Act, 1880."(*k*) It follows that, inasmuch as "the common law of England is, that where fellow-servants are engaged in a common employment, whether one is . . . . bound to obey the other or not, the master is not liable for injury occasioned to the one through

(*d*) *The Malta*, 2 Hag. 158, 166.

(*e*) Per Lord Stowell, *The Exeter*, 2 C. Rob. 261.

(*f*) *Limland* v. *Stephens*, 3 Esp. 269; *The Castilia*, 1 Hagg. 59.

(*g*) *Couch* v. *Steel*, 3 E. & B. 402; and see *Gordon* v. *Pyper*, 94 L. T. J. 79.

(*h*) 39 & 40 Vict. c. 80, s. 5.

(*i*) See these enactments collected, *infra*, §§ 528, 529.

(*k*) 43 & 44 Vict. c. 42. See s. 8 of that Act, and 38 & 39 Vict. c. 90, s. 13, kept alive for this purpose by 43 & 44 Vict. c. 16, s. 11. A Bill introduced in 1893 to repeal the Act of 1880, and, *inter alia*, to give seamen the benefit of the substituted enactment, failed to pass into law. It seems likely, however, that the advantages of the Act will before long be extended to them.

Common employment.

the negligence of the other,"(*l*) neither the seaman nor his personal representatives can recover damages for injury or death occasioned to him by the negligence of his superior officers,(*m*) unless indeed it consists in a failure to remedy preventable unseaworthiness.(*n*) It has been successfully contended in Ireland that the master of a ship is not for this purpose the fellow-servant of the seaman.(*o*) This view has been repudiated in England.(*m*) But persons navigating a ship on the sea or in an open estuary are not in general deemed to be in common employment with those navigating another ship of the same owners.(*p*) Nor are seamen prevented by the doctrine in question from recovering against a stevedore for the consequences of the negligence of his servants in discharging the ship.(*pp*)

The Duties of the Crew.

Seamen's agreement.

§ 468. The principal duties of the crew are described and enumerated by the agreement into which the master of every ship (except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom) is bound to enter (*q*) with every seaman he carries to sea.

What the seamen undertake to do.

By this agreement, the seamen undertake to serve on board the ship, in the several capacities expressed against their respective names, during the voyage described in it; and agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties and to be obedient to all the lawful commands of the master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the ship, her stores and cargo, whether on board, in boats, or on shore.

The duties of seamen.

It is the duty of the seamen to bring to their work competent skill and knowledge, and to use under all circumstances their utmost exertions to preserve both ship and cargo; to assist in the stowage and delivery of the latter at the several ports to which the voyage described in the articles extends; to help in mooring the former, and to stay by her until the cargo be actually delivered,(*r*) or until they are legally discharged, unless compelled

(*l*) Per Lord Esher, M.R., *Hedley* v. *Pinkney, &c., Co.*, (1891) 1 Q. B. at p. 62. There seems to be some doubt how far this is the law in Scotland, *ibid.*

(*m*) *Hedley* v. *Pinkney, &c., Co.*, (1891) 1 Q. B. 58. This case is under appeal to the House of Lords.

(*n*) See 39 & 40 Vict. c. 80, s. 5 *infra*, § 529; and as to what is unseaworthiness, *Hedley, &c., Co.* v. *Pinkney, ubi sup.*

(*o*) *Ramsay* v. *Quinn*, Ir. Rep. 8 C. L. 322. It has been held that a pilot employed by compulsion of law is not to be treated as in common employment with the servants of the shipowner; *Smith* v. *Steele*, L. R. 10 Q. B. 125; § 569, *infra*.

(*p*) *The Petrel*, (1893) P. 320.

(*pp*) *Cameron* v. *Nystrom*, 68 L.T. 772.

(*q*) 17 & 18 Vict. c. 104, s. 149; see forms, Appendix No. 7. The agreement in the case of fishing boats is regulated by the Merchant Shipping (Fishing boats) Act, 1883 (46 & 47 Vict. c. 41), s. 13.

(*r*) Abbott, Sh., 13th ed. 785, 800; Maude & P., 4th ed. 177. *The Baltic Merchant*, Edw. 86, 91; *The Cambridge*, 2 Hag. 243, 248.

by illness to leave before either of these events has happened.(s) They are bound in short, during the continuance of their contract, to devote their whole time and energy to the service of their employers.(t)

The duties of the seamen.

The seaman is required to render a cheerful obedience to lawful orders. Disobedience to such orders is an offence of the gravest kind. The Admiralty Court is particularly attentive to preserve that subordination and discipline on board ship which is so indispensably necessary for the preservation of the ship and of all the property and persons in her. A peremptory or harsh tone or manner on the part of the master, in the exercise of his authority, will not justify or excuse resistance and disobedience, for the nature of the service requires that those persons who engage in it should accommodate themselves to the circumstances attending it.(u)

Shipwreck and mutiny.

§ 469. If a ship is wrecked and it is improbable that she can be rescued, the contract of the seamen is not thereby terminated. The authority of the master does not end with the misfortune of a wreck. In such an event it is the duty of the seamen to remain a reasonable time for the recovery of parts of the ship and cargo (if in the judgment of the master there is any reasonable prospect of such recovery), and not to disperse themselves without some discharge from the master;(x) and it is said that even the right of self-preservation is subordinate to the duty of remaining by the ship and master as long as he deems it possible that she may be saved.(y)

Seamen are not discharged from their duty to the owners by a mutiny. They are bound to give every assistance in their power to prevent, or to quell a mutiny, and whenever there is a reasonable prospect of success, to endeavour to recover the ship and cargo from the mutineers; but they are not called on to sacrifice their lives wantonly.(z)

Apprentices.

Marine office superintendents to assist in binding apprentices, and may receive fees.

§ 470. With regard to apprentices, the statutes contain certain requirements and regulations for facilitating the binding of paupers to the sea service, and for other purposes. The Merchant Shipping Act, 1854, after requiring Mercantile Marine Office superintendents to give to boards of guardians, overseers, or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, any assistance in their power, and authorising them to receive from persons availing them-

(s) *The Test*, 3 Hag. 307, 315.

(t) *Harris* v. *Watson*, 1 Peake, N. P. 72; *Stilk* v. *Myrick*, 2 Camp. 317, 319.

(u) Per Lord Stowell, *The Exeter*, 2 C. Rob. 261, 264.

(x) *The Neptune*, 1 Hag. 227, 236–8; *The Warrior*, Lush. 476.

(y) Maude & P. 4th ed. 177; but see per Dr. Lushington, *The Florence*, 16 Jur. 572, 573.

(z) *The Governor Raffles*, 2 Dods. 14, 17.

selves of such assistance such fees as may be determined by the Board of Trade, with the concurrence, as regards pauper apprentices, of the Poor Law Board in England, or of the Poor Law Commissioners in Ireland, as the case may be,(a) enacts as follows:

Indentures of boys bound apprentices to sea service by guardians or overseers to be witnessed by two justices.

142. In the case of [boys bound apprentice by any poor law authority] the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two Justices of the Peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose.

Indentures of apprenticeship to be exempt from stamp duty, and to be recorded.

143. All indentures of apprenticeship to the sea service shall be exempt from stamp duty; and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea service in the United Kingdom shall within seven days after the execution of the indentures take or transmit the same to the Registrar General of Seamen, or to some [marine office superintendent,(b)] and the said registrar or [superintendent (b)] shall retain and record one copy, and shall indorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said Registrar of Seamen, or to some [marine office superintendent,(b)] to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding ten pounds.

Rules to govern apprenticeship of paupers in Great Britain and Ireland respectively.

144. Subject to the provisions herein-before contained, all apprenticeships to the sea service made by any guardians or overseers of the poor, or persons having the authority of guardians of the poor, shall, if made in Great Britain, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons, and if made in Ireland shall be subject to the following rules; (that is to say,)

(1.) In every union the guardians of the poor, or other persons duly appointed to carry into execution the Acts for the relief of the destitute poor and having the authority of guardians of the poor, may put out and bind as an apprentice to the sea service any boy who or whose parent or parents is or are receiving relief in such union, and who has attained the age of twelve years, and is of sufficient health and strength, and who consents to be so bound:

(2.) If the cost of relieving any such boy is chargeable to an electoral division of a union, then (except in cases in which paid officers act in place of guardians) he shall not be bound as aforesaid unless the consent in writing of the guardians of such electoral division or of a majority of the guardians (if more than one) be first obtained, such consent to be, when possible, indorsed upon the indentures:

(3.) The expense incurred in the binding and outfit of any such

(a) 17 & 18 Vict. c. 104, s. 141. Tables of the fees payable there are posted in all Mercantile Marine Offices.

(b) 25 & 26 Vict. c. 63, s. 15.

apprentice shall be charged to the union or electoral division (as the case may be) to which the boy or his parent or parents is or are chargeable at the time of his being apprenticed:

(4.) All indentures made in any union may be sued upon by the guardians of the union or persons having the authority of guardians therein for the time being, by their name of office, and actions brought by them upon such indentures shall not abate by reason of death or change in the persons holding the office; but no such action shall be commenced without the consent of the Irish Poor Law Commissioners:

(5.) The amount of the costs incurred in any such action and not recovered from the defendant therein, may be charged upon the union or electoral division (as the case may be) to which the boy or his parent or parents was or were chargeable at the time of his being apprenticed.(c)

Apprentices and their indentures to be brought before superintendent before each voyage in a foreign-going ship.

145. The master of every foreign-going ship shall, before carrying any apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the [superintendent (d)] before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any); and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same have been registered, shall be entered on the agreement; and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding five pounds.

The master is also required, as we have seen,(e) on arriving at a foreign port, or a port in a British Possession abroad, to deliver to the British Consular officer, or the chief officer of Customs as the case may be, all indentures or assignments of apprenticeships, under a penalty of £20.

§ 471. Corresponding provisions with respect to apprenticeship to the sea-fishing service are to be found in the Merchant Shipping (Fishing boats) Act, 1883.(f)

Apprenticeship to the sea-fishing service.

This Act requires all indentures of apprenticeship and agreements with boys under sixteen to be entered into before a marine office superintendent, who is to satisfy himself that the requirements of the Act are complied with, that the intended master and the boy are fit persons for the purpose, and that the boy's nearest relations or guardians assent to his apprenticeship, and to the terms of the engagement; and is to sign an indorsement on the indenture or agreement to that effect. In case the boy's relations or guardians cannot be found, the superintendent is to act as guardian for the occasion, and so state in the indorsement, which is to be evidence, without proof of his signature, of the facts stated in it. The indenture or agreement is to be in triplicate, one part to be kept by the master, one by the boy, and one by

(c) 17 & 18 Vict. c. 104, s. 144. (d) 25 & 26 Vict. c. 63, s. 15.
(e) 17 & 18 Vict. c. 104, s. 279; *supra*, § 225.
(f) 46 & 47 Vict. c. 41, ss. 4–12.

the superintendent.(*h*) It is to be in form required by the Act, unless that form is altered by order in Council, on the recommendation of the Board of Trade.(*i*) Agreements or indentures of apprenticeship for this service are forbidden to boys under thirteen, and if made with them are void.(*k*) The receipt of money in consideration of a boy's being bound by indenture or agreement is a misdemeanour.(*l*) Agreements which do not comply with the Act are void, and a maximum penalty of £20 is imposed on persons taking boys to sea in the fishing service without an agreement, or under a void agreement.(*m*) But those stipulations of a void agreement, which are in favour of the boy, may be enforced for his benefit by the marine office superintendent at the port from which the boy was taken, or at the nearest port.(*n*) Those of a valid agreement are enforceable on behalf of the boy by the superintendent before whom it was completed.(*o*)

Apprentice may sue in Admiralty Court for wages.

An apprentice is entitled to sue in the Court of Admiralty the proceeds of sale of the ship in which he has served, for wages due under a general apprenticeship to the owner, but not for the penalty contained in the indenture for breach of the agreement.(*p*)

The Engagement of Seamen: The Agreement with the Crew.

Seamen's contract before 1854.

§ 472. The engagement of the crew is a duty which is imposed upon the master, and the right performance of which requires no small amount of care, discrimination, and judgment.

Before the passing of the Merchant Shipping Act, 1854, it had been laid down by Lord Stowell, that the seaman's contract was "an ancient instrument necessary to describe the engagement of the contracting parties, with respect to the two particular obligations which alone were necessary to be contracted for; . . . . on the part of the shipowner a description of the intended voyage, and, on the part of the seaman, engaging for the rate of wages which he was content to accept for his services on that voyage;" and that the general duties of both parties, arising out of the contract, were sufficiently described by the general law.(*q*)

It was also laid down that an agreement for wages might be made by word of mouth, or in writing;(*r*)—that an informality in the mode of hiring would not disqualify from remuneration, if the work had been properly done;"(*s*)—that when the agree-

(*h*) 46 & 47 Vict. c. 41, s. 4.
(*i*) *Ibid.*, s. 5.
(*k*) *Ibid.*, s. 6.
(*l*) *Ibid.*, s. 7. Fees are provided for by s. 11.
(*m*) *Ibid.*, s. 8. This section exempts from the operation of the Act the employment of boys by the day only, with whom no written agreement has been made.
(*n*) *Ibid.*, s. 9.
(*o*) *Ibid.*, s. 10.
(*p*) *The Albert Crosby*, Lush. 44.
(*q*) *The Minerva*, 1 Hag. 352.
(*r*) *The Prince George*, 3 Hag. 376, 378.
(*s*) *The Jane and Matilda*, 1 Hag. at p. 193.

ment was left imperfect as to the amount of wages, it was open to both parties to supply the omission by parol evidence, notwithstanding that the 2 Geo. II. c. 36 directed that such agreements should be conclusive and binding;(*t*)—that although the ship's articles were conclusive with respect to the specification of the wages and the voyage, on other collateral agreements they were not so in all cases, and the Court would consider how far such clauses were reasonable and consistent with justice, bearing in mind the ignorance and imprudence of seamen, and their inability to understand the meaning of a long and wordy instrument;(*u*) and it was said that in case of a doubt upon the construction, the Court would look favourably to the seamen's claims.(*x*)

Seamen's contract before 1854.

§ 473. The Merchant Shipping Acts contain precise regulations respecting the engagement, protection, and proper discipline of seamen, with all of which the master should make himself thoroughly acquainted. With reference to their engagement the Merchant Shipping Act, 1854,(*y*) contains the following sections:—

Since 1854.

146. The Board of Trade may grant to such persons as it thinks fit licences to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as such board thinks proper.

Board of Trade may license persons to procure seamen.

147. [Imposes a penalty not exceeding twenty pounds for every seaman or apprentice engaged or supplied in contravention of the section, on

Penalties:

(1) Any unlicensed(*z*) person other than the owner,(*a*) master or mate of the ship, or a *bonâ fide* servant of the owner in his constant employ, or a Marine Office superintendent,(*b*) who engages or supplies any seaman or apprentice for any ship in the United Kingdom:

for supplying seamen without licence:

(2) Any one who employs any unlicensed person, other than those above excepted, for the purpose of so engaging or supplying any seaman or apprentice, and such person, if licensed, is, in addition, to forfeit his licence:

for employing unlicensed persons:

(3) Any person who knowingly receives or accepts any seaman or apprentice engaged or supplied contrary to the provisions of the Act.]

for receiving seamen illegally supplied.

148. [Imposes a penalty not exceeding five pounds for each offence on any person who demands or receives, directly or indirectly, from any seaman or apprentice, or from any one seeking employment as such, or any one on his behalf, any remuneration whatever, other than the authorised fees,(*bb*) for providing him with employment.]

Penalty for receiving remuneration from seamen for shipping them.

(*t*) *The Harvey*, 2 Hag. 7982; *The Porcupine*, 1 Hag. 378.

(*u*) *The Prince Frederick*, 2 Hag. 394.

(*x*) *The Hoghton*, 3 Hag. at p. 112.

(*y*) 17 & 18 Vict. c. 104. By s. 109, "so much of the third part of this Act as relates to the shipping and discharge of seamen in the United Kingdom shall apply to all sea-going British ships, wherever registered, and to the owners, masters, and crews of such ships." As to its application to the engagement and discharge of seamen abroad, see § 485 note (*e*), *inf.*

(*z*) The effect of s. 39 (2) of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), is to throw on a defendant the burthen of proving that he holds a licence, when once the prosecution have proved the supply of the seamen: *R.* v. *Johnson*, 55 L. T. 265.

(*a*) "Owner" includes a person who, though not registered, has purchased a share in a ship and has therefore an equitable interest in her: *Hughes* v. *Sutherland*, 7 Q. B. D. 160.

(*b*) 25 & 26 Vict. c. 63, s. 15.

(*bb*) No fees are now authorised, ss. 125 & 126 being repealed by 55 & 56 Vict. c. 19. See § 6, *sup.*

§ 474. The following general provisions relate to the agreements to be made with seamen.

Agreements to be made with seamen, containing certain particulars.

149. The master of every ship, except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom,(c) shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade,(d) and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say)

(1) The nature,(e) and, as far as practicable, the duration of the intended voyage (c) or engagement:
(2) The number and description of the crew, specifying how many are engaged as sailors:(c)
(3) The time at which each seaman is to be on board or to begin work:
(4) The capacity in which seaman is to serve:(f)
(5) The amount of wages which each seaman is to receive:(c)
(6) A scale of the provisions which are to be furnished to each seaman:
(7) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt:(g)
(8) An entry of the statement delivered to the officer of customs of the distance in feet and inches between the centre of the load line disc and the upper edge of each of the lines indicating

Fishing boats.

(c) In the case of fishing boats an agreement is required between the skipper and seamen containing particulars identical with those set out in the text, except that No. (2) need not specify how many of the crew are engaged as sailors; and No. (5) must specify "the remuneration which each seaman is to receive, whether in wages, or by a share in the catch, or in both ways, and the time from which each seaman's remuneration is to commence:" 46 & 47 Vict. c. 41, s. 13. In this Act, "A voyage of a fishing boat" means "a fishing trip, commencing with a departure from a port for the purpose of fishing, and ending with the first return to a port thereafter upon the conclusion of the trip. A return due to distress only" is not deemed a return if followed by a resumption of the trip: s. 18.

(d) This agreement is exempt from stamp duty; see ss. 8, 9, and *supra* § 1; and so is every agreement or memorandum made between the master and mariners of any vessel for wages on any voyage coastwise from port to port in the United Kingdom; 54 & 55 Vict. c. 39, 1st Sched. For forms approved by the Board of Trade, see Appendix, No. 7. If the agreement is not in the authorised form, it seems to be provable in favour of the seamen, though inadmissible in evidence for the owner or master: see s. 8, and *The Prince George*, 3 Hag. at p. 378, and § 472 *supra*.

(e) See 36 & 37 Vict. c. 85, s. 7 *inf.*; *The Westmorland*, 1 W. Rob. 216; *infra* § 479.

(f) By the Merchant Shipping (Wages and Rating Act) 1880 (43 & 44 Vict. c. 16), s. 7, "a seaman shall not be entitled to the rating of A.B., that is to say, of an able-bodied seaman, unless he has served at sea for four years before the mast, but the employment of fishermen in registered decked fishing vessels shall only count as sea service up to the period of three years of such employment; and the rating of A.B. shall only be granted after at least one year's sea service in a trading vessel, in addition to three or more years' sea service on board of registered decked fishing vessels. Such service may be proved by certificates of discharge, by a certificate of service from the Registrar General of Shipping and Seamen (which certificate the Registrar shall grant on payment of a fee not exceeding sixpence), and in which shall be specified whether the service was rendered in whole or in part in steam ship or in sailing ship, or by other satisfactory proof. Nothing in this section shall affect a seamen who has been rated and has served as A.B. before the passing of this Act."

(g) As to punishment by "disrating" and reduction of wages, see *The Highland Chief*, (1892) P. 76; § 487 *infra*.

the position of the ship's decks which is above that centre. No superintendent shall proceed with the engagement of the crew until this entry is made.(*h*)]

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages,(*i*) and may contain any other stipulations which are not contrary to law:(*k*) Provided that if the master of any ship belonging to any British Possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.(*l*)

Proviso as to forms for Colonial ships.

The Merchant Shipping Act, 1873,(*m*) contains the following section:—

7. Any agreement with a seaman made under section one hundred and forty-nine of the Merchant Shipping Act, 1854, may, instead of stating the nature and duration of the intended voyage or engagement as by that section required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

And by the Merchant Shipping Act, 1854:

157. If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master(*n*) in the case of a foreign-going ship, and the master or owner in the case of a home trade ship, shall for each such offence incur a penalty not exceeding five pounds.

Penalty for shipping seamen without agreement duly executed.

§ 475. With respect to foreign-going ships, the Merchant Shipping Act, 1854, proceeds:—

150. In the case of all foreign-going ships,(*o*) in whatever part of

(*h*) 39 & 40 Vict. c. 80, s. 26 (3), (5); § 111 *supra*.

(*i*) See as to allotment, 17 & 18 Vict. c. 104, ss. 168, 169; and 43 & 44 Vict. c. 16, s. 3; as to advances and advance notes, 8 Geo. 1, c. 24, s. 7; 52 & 53 Vict. c. 46, s. 2; §§ 483, 484 *infra*.

(*k*) An equitable arrangement for the apportionment of salvage is not contrary to law, notwithstanding s. 182 *infra* § 494; *The Wilhelm Tell*, (1892) P. 337, a decision on the corresponding section of the Merchant Shipping (Fishing Boats) Act, 46 & 47 Vict. c. 41, s. 13. As to what stipulations are ambiguous and contrary to the policy of the statute, 17 & 18 Vict. c. 104, see *Frazer* v. *Hatton*, 2 C. B. N. S. 512, a decision on corresponding section of 13 & 14 Vict. c. 93. Prior to that Act effect was given to a clause, then usual in the Baltic trade, that should the ship winter abroad on account of the ice, the officers and men should accept half wages during the detention: *The Hoghton*, 3 Hagg. 100.

(*l*) An agreement in writing is not a condition precedent to the seamen's right to and lien for wages for services actually rendered, at any rate in a case where the contemplated voyage is never undertaken: *re Great Eastern S.S. Co.*, 53 L. T. 594.

(*m*) 36 & 37 Vict. c. 85.

(*n*) "The skipper," in case of a fishing boat, 46 & 47 Vict. c. 41, s. 20.

(*o*) Similar provisions, with respect to fishing boats, are contained in 46 & 47 Vict. c. 41, s. 14, which differs from the text only in the following particulars: (1) The presence of a Marine Office superintendent is in no case required at the signing of the agreement. (2) The duties described in sub.-s. 2 are imposed upon the skipper, who is (3) to send one part of the agreement to the Marine Office superintendent at the port of departure. (4) Sub.-s. 4 only applies where the services are lost "after the fishing boat's putting to sea," and the skipper is to attest the signatures of the substitutes. The use of the words "before the fishing boat puts to sea, if practicable, and if not, as soon afterwards as possible," would appear to be an oversight.

Manner of entering into agreements in case of fishing boats.

For foreign-going ships such agreements, when made in the United Kingdom, except in special cases, to be made before and attested by a Marine Office superintendent(p): To be in duplicate:

Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say)

(1) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a [Marine Office superintendent].(p)

(2) Such [superintendent](p) shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature:

(3) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the [superintendent],(p) and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master:

Provision for substitutes.

(4) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some [superintendent](p) duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

Foreign-going ships making short voyages may have running agreements.

151. In the case of foreign-going ships(q) making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships; and every person engaged thereunder, if discharged in the United Kingdom, shall be discharged in the manner hereby required for the discharge of seamen belonging to other foreign-going ships.

152. The master of every foreign-going ship (r) for which such a

(p) 25 & 26 Vict. c. 63, s. 15.

(q) Or fishing boats, the only difference being that in their case the running agreement may be for a number of weeks, 46 & 47 Vict. c. 41, s. 16.

Running agreements for fishing boats.

(r) Corresponding provisions with respect to fishing boats are contained in 46 & 47 Vict. c. 41, s. 17, which applies to every seaman engaged or discharged at the port. The skipper is to sign the indorsement. The penalty for a false indorsement is £5. This sect. contains no reference to the Marine Office superintendent; but sect. 19 requires the owners (or their agent, in case of all the owners, or the managing owner being at sea), under a maximum penalty of £5 for every owner, within forty-eight hours of the boat's departure from port on any voyage, to send to the superintendent at the port a true report, in form sanctioned by the Board of Trade, and signed by an owner or the managing owner, containing the names of the skipper, seamen, and apprentices, and such other particulars as the Board may require. And s. 21 requires the skipper of every fishing boat, before leaving any port for sea during a running agreement after the first making of it, to sign and send to the nearest superintendent a full and accurate statement in form sanctioned by the Board, of every change in his crew, under a maximum penalty of £5.

Reports of crews.

running agreement as aforesaid is made shall, upon every return to any port in the United Kingdom before the final termination of the agreement, discharge or engage before the [Marine Office superintendent] at such port any seaman whom he is required by law so to discharge or engage, and shall upon every such return indorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so indorsed to the superintendent; and any master who wilfully makes a false statement in such indorsement shall incur a penalty not exceeding twenty pounds; and the [superintendent](*s*) shall also sign an indorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall re-deliver the agreement so indorsed to the master.

Engagement and discharge of seamen in the meantime.

153. In cases in which such running agreements are made, the duplicate agreement retained by the [superintendent](*s*) upon the first engagement of the crew shall either be transmitted to the Registrar-General of Seamen immediately, or be kept by the [superintendent] until the expiration of the agreement, as the Board of Trade directs.

Duplicates of running agreements, how to be dealt with.

154. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.(*ss*)

Fees to be paid on such running agreements.

158. The master of every foreign-going ship of which the crew has been engaged before a [Marine Office superintendent](*s*) shall before finally leaving the United Kingdom sign and send to the nearest [superintendent](*s*) a full and accurate statement in a form sanctioned by the Board of Trade of every change which takes place in his crew before finally leaving the United Kingdom, and in default shall for each offence incur a penalty not exceeding five pounds; and such statement shall be admissible in evidence, subject to all just exceptions.

Changes in crew to be reported.

§ 476. With respect to home-trade ships:

155. In the case of home-trade ships, crews or single seamen may, if the master thinks fit, be engaged before a [Marine Office superintendent](*s*) in the manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

In home-trade ships agreement to be entered into before a superintendent or other witness.

156. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement; but with the foregoing exception all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.(*t*)

Special agreements for home-trade ships belonging to same owners.

(*s*) 25 & 26 Vict. c. 63, s. 15.

(*ss*) S. 154 appears to be now obsolete. See *supra* § 6 and note (*c*) thereto; and § 473, note (*bb*).

(*t*) 46 & 47 Vict. c. 41, s. 15, contains

162. [provides] (1.) In the case of home-trade ships of more than eighty tons burthen, no agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival.

This provision no longer applies to agreements with individual seamen, for the Merchant Shipping Act, 1872,(*u*) contains the following section:

Owner or agent of home-trade ships may enter into time agreements which need not expire half-yearly.

16. The owner of home-trade ships or his agent may enter into time agreements, in forms to be sanctioned by the Board of Trade, with individual seamen, to serve in any one or more ships belonging to him, which agreements need not expire on either the thirtieth day of June or the thirty-first day of December, anything in the Merchant Shipping Act to the contrary notwithstanding: provided always, that a duplicate of each agreement entered into under the provisions of the section be forwarded to the Registrar-General of Shipping within forty-eight hours after it has been entered into.

§ 477. The following sections of the principal Act relate to the engagement of seamen abroad:

Seamen engaged in the colonies to be shipped before some [superintendent] or officer of customs.

159. Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession, engages any seaman in any British possession other than that to which the ship belongs, shall, if there is at the place where such seaman is engaged any official [Marine Office superintendent],(*x*) or other officer duly appointed for the purpose of shipping seamen, engage such seaman before such [superintendent],(*x*) and if there is no such [superintendent] or officer, then before some officer of Customs; and the same rules, qualifications, and penalties as are hereinbefore specified with respect to the engagement of seamen before [superintendents] in the United Kingdom shall apply to such engagements in a British possession; and upon every such engagement such [superintendent] or officer as aforesaid shall indorse upon the agreement an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and if in any case such attestation is not made, the burden of proving that the seaman was duly engaged as hereby required shall lie upon the master.

Seamen engaged in foreign ports to be shipped with the sanction and in the presence of the consul.

160. Every master of a British ship who engages any seaman at any place out of Her Majesty's dominions in which there is a British consular officer shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage such seaman before such officer; and the same rules as are hereinbefore contained with respect to the engagement of seamen before [Marine Office superintendents] in the United Kingdom shall apply to such engagements made before consular officers; and upon every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and every master who engages any seaman in any place in which there is a consular officer, otherwise than is hereinbefore required, shall incur a penalty not exceeding twenty pounds; and if in any case

Agreements for fishing boats belonging to same owners.

similar provisions with respect to fishing boats; where there are several owners, the registered managing owner is the one who may make the agreement, which is to specify, in addition to the particulars mentioned above, the length of the service, and the rates, periods, and method of payment.

(*u*) 35 & 37 Vict. c. 73.

the indorsement and attestation hereby required is not made upon the agreement, the burden of proving the engagement to have been made as hereinbefore required shall lie upon the master.

§ 478. The production from time to time of agreements and officer's certificates is required by the same Act, as follows:

Rules as to production of agreements and certificates of masters, mates, and engineers of foreign-going ships.

161. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for foreign-going ships (that is to say):

(1) The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the [superintendent](v) before whom the same is signed the certificates of competency or service which the said master and his first and second mate or only mate, [and his engineer or engineers, if any,(x)] as the case may be, are hereby required to possess; and upon such production being duly made, and the agreement being duly executed as hereby required, the [superintendent] shall sign and give to the master a certificate to that effect:

(2) In the case of running agreements for foreign-going ships the [superintendent](v) shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the [superintendent] the certificate of competency or service of any first, second, or only mate [and of any certificated engineer (x)] then first engaged by him, a certificate to that effect:

(3) The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the [superintendent](v) as aforesaid to the collector or comptroller of customs, and no officer of customs shall clear any such ship outwards without such production; and if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced:

(4) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver such agreement to a [superintendent] at the place; and such [superintendent] shall thereupon give to the master a certificate of such delivery; and no officer of customs shall clear any foreign-going ship inwards without the production of such certificate:

And if the master of any foreign-going ship fails to deliver the agreement to a [superintendent] at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding five pounds.

Rules as to production of agreements and certificates for home-trade ships.

162. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for home trade ships (that is to say):

(2) (y) The master or owner of every such ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some [superintendent] in the United Kingdom every agreement made within the six calendar months next preceding such days respectively, and shall also in the case of home-trade pas-

(v) 25 & 26 Vict. c. 63, s. 15.

(x) *Ibid.* s. 10. As to what certificates are required, see §§ 29 & 36 *supra*.

(y) See sub.-s. (1), *supra* § 476.

senger ships produce to the [superintendent] the certificates of competency or service which the said master, and his first or only mate, [and his first or only engineer, if any,(x)] as the case may be, are hereby required to possess:

(3) The superintendent shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of customs shall grant a clearance or transire for any such ship as last aforesaid without the production of such certificate; and if any such ship attempts to ply or go to sea without such clearance or transire, any such officer may detain her until the said certificate is produced:

And if the agreement for any home-trade ship is not delivered or transmitted by the master or owner to a [superintendent] at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding five pounds.

Form of agreement with the crew.

§ 479. Forms of agreement sanctioned by the Board of Trade for foreign-going and home-trade ships respectively will be found in the Appendix.(z) The following paragraphs relate to the mode in which they should be filled up.

The description of the voyage.

With reference to "the nature" and "duration of the intended voyage," a seaman is entitled to know what is the voyage for which he contracts, and he is therefore entitled to have in the agreement a precise description of the voyage for which he contracts to serve, and if a vague and loose description is inserted by the master, the Court will give the words a reasonable and definite construction in favour of the seaman, and will not decree a forfeiture of wages already earned, if the seaman refuses to be bound by the vague, uncertain, and unreasonable parts of the description of the voyage.(a)

But, although a clear and definite statement of the intended voyage, modified only by the exigencies of commerce, is indispensable, the agreement would not be bad for being in the alternative, as "from Liverpool to the West Coast of Africa and back, *or* for a term not to exceed three years."(b) And inasmuch as the substance of the agreement is the performance of the voyage therein described, whether its duration fall short of, or exceed the time named, the voyage, if undertaken by the seamen, must be fully carried out and completed by them.(c)

Such uncertain, indefinite, and unlimited descriptions as these —"or elsewhere"(d)—or "to any port or ports in Europe"—and the like, are unreasonable and incapable of being enforced against the seamen, except in a very restricted sense. Where, for example, the voyage was described in the agreement as "to Van Diemen's Land, viâ Cork and elsewhere and back to London," and

(z) See Appendix, No. 7.

(a) *The Minerva*, 1 Hagg. 347; *The Countess of Harcourt*, 1 Hagg. 248; *The George Home*, 1 Hagg. 370; *The Westmorland*, 1 W. Rob. 216.

(b) *Frazer* v. *Hatton*, 2 C. B. N. S. 512.

(c) *The American Union*, 5 (Irish) Jurist, N. S. 380; Pritchard, 3rd ed., 2140.

(d) *The Minerva*, 1 Hagg. at p. 361.

the ship, after sailing to Sydney, and thence to Batavia, had arrived in the Downs, when the sailors refused to go with her to Holland; Lord Stowell, saying that the seamen were entitled to know the covenants that bind them, refused to decree a forfeiture of their wages.(*e*)

The agreement of crew. Description of the voyage.

A like decision was arrived at in *The Minerva*,(*f*) where the voyage was described as "to New South Wales and India *or elsewhere*, and to return to a port in Europe;" and Lord Stowell said the words "or elsewhere," were no description of a voyage, and must receive a reasonable construction and limitation, and could not be admitted as a universal alibi for the whole world.

In *The Westmorland*,(*g*) the voyage was described "from the port of London to Swan River, West Australia, from thence to any port or place in the India or China seas, and during her stay and trade there, until her return to a port of discharge in Great Britain or continent of Europe (in either case the voyage to end in Great Britain), and term of time not to exceed three years," and the ship had arrived at Cowes on her return, when the crew refused to proceed to Holland. Dr. Lushington said that the words "nature of the voyage" in the statute (*h*) then in force were intended to secure to the seaman a fair intimation of the service in which he was about to engage himself, and that the terms used gave him no such intimation; and decided in favour of the claim for wages.

An alteration in the description of the voyage made after the crew have signed the agreement, and without their consent, is, of course, not binding on them,(*i*) and a voluntary alteration of the risks involved, exposing the crew to perils other than such as are incidental to a voyage for ordinary commercial purposes, is a breach of the agreement, entitling the seamen to abandon the service, and sue for the loss of wages involved in doing so.

Effect of change of voyage after agreement.

In *Burton* v. *Pinkerton* (*k*) the plaintiff, a seaman, had agreed to serve for twelve months, on a voyage from London to Rio, and other ports. The vessel carried a cargo of coal and ammunition, with which, from time to time, she supplied two Peruvian war ships in whose company she sailed. At Rio, war having broken out between Spain and Peru, the master (the defendant) announced his intention, under direction of the captains of the war ships, to proceed to Callao, another Peruvian port. The plaintiff objected to proceed further on the voyage on the ground that it was illegal, and involved greater danger than he anticipated when he

(*e*) *The Countess of Harcourt*, 1 Hagg. 248.

(*f*) 1 Hagg. 347, 361; and see *The George Home*, 1 Hagg. 370.

(*g*) 1 W. Rob. 216.

(*h*) 5 & 6 W. 4, c. 19, s. 2.

(*i*) *The Eliza*, 1 Hagg. 182; and see 17 & 18 Vict. c. 104, ss. 163, 164, *infra* § 481.

(*k*) L. R. 2 Ex. 340.

entered into his agreement with the defendant, and left the ship. He afterwards brought an action for breach of contract, and it was held that the defendant must be taken to have engaged the plaintiff for an ordinary voyage, and that the plaintiff was entitled to treat as a breach of contract his employment by the defendant on a voyage which would expose him to greater danger than he had originally reason to anticipate, and to recover damages for the wages lost in consequence of the breach, and for the inconvenience naturally flowing therefrom. It appears that had he remained by the ship he would have been entitled in addition to his wages to damages for any hardships suffered by reason of the breach of contract.(*l*)

List of seamen.

§ 480. By the number and description of the crew, the seamen are enabled to judge whether the ship is sufficiently manned, or whether any undue amount of labour will be imposed upon them owing to the want of sufficient hands.

Date of commencement of voyage.

By fixing the time at which the seaman is to be on board, or to begin work, the agreement ascertains the period from which his right to wages commences. But if he actually commences work before such specified time, his right to wages commences at the time when he so commences work.(*m*)

Rate of wages.

It is equally important for owners, masters, and seamen, that "the amount of wages which each seaman is to receive" should be ascertained beyond all question. The seaman, therefore, undertakes for a specific amount or rate of wages, to navigate the ship, in a capacity, during the voyage, and on the terms respectively specified, in the agreement; and, as we shall see,(*n*) he cannot enforce any subsequent stipulation for increased pay for performing the duties appertaining to that capacity, nor claim any such increased pay by any usage or custom. It would be wholly subversive of good discipline in the most critical moments of the voyage, to allow the possibility of such a claim.

§ 481. The Merchant Shipping Act, 1854,(*o*) contains the following further provisions with regard to the seamen's agreement:

Alterations to be void unless attested to have been made with the consent of all parties.

163. Every erasure, interlineation or alteration in any such agreement with seamen as is required by the third part of this Act (except additions so made as hereinbefore directed for shipping substitutes, or persons engaged subsequently to the first departure of the ship), shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration,(*p*) by the written attestation (if made in Her Majesty's dominions)

(*l*) *The Justitia*, 12 P. D. 145.
(*m*) 17 & 18 Vict. c. 104, s. 181.
(*n*) *Infra*, § 506.
(*o*) 17 & 18 Vict. c. 104.
(*p*) As to fishing boats, 46 & 47 Vict. c. 41, s. 32, which stops at the word alteration, is almost identical with the first part of s. 163 of the principal Act. S. 23

of some [Marine Office superintendent],(q) justice, officer of customs, or other public functionary, or (if made out of Her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants.

Penalty for falsifying agreement.

164. Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or makes, or assists in making, or procures to be made, any false entry in, or delivers, assists in delivering, or procures to be delivered, a false copy of any agreement, shall for each such offence be deemed guilty of a misdemeanor.(p)

Seamen not to be bound to produce agreement.

165. Any seaman may bring forward evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

Copy of agreement to be made accessible to crew.

166. The master shall at the commencement of every voyage or engagement cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding five pounds.(r)

Power to rescind the agreement in certain cases is conferred by the Merchant Shipping (Wages and Rating) Act, 1880,(s) as follows:

Power of court to rescind contract between owner or master and seaman or apprentice.

8. Where a proceeding is instituted in or before any court in relation to any dispute between an owner or master of a ship and a seaman or apprentice to the sea service, arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court, if, having regard to all the circumstances of the case, they think it just so to do, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section.

For the purposes of this section the term "court" includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates.

§ 482. As to agreements with Lascars, the Merchant Shipping Act, 1854, provides:

Contracts may be made with natives in India, under certain conditions, binding them to go to Australia, and thence to serve in other ships to the United Kingdom.

544. It shall be lawful for any master or owner of a ship, or his agent, to enter into contracts with Lascars or natives of India,(t) binding them to proceed to any port or ports in Australian colonies either as seamen or as passengers, and there to engage themselves as seamen in any ship which may happen to be there and to be bound to the United Kingdom or to any other part of Her Majesty's dominions; provided that every such contract shall be in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor-General of India in Council, or the governors of the respective Presidencies in which the contract is made, in Council, may direct; and if any Lascar

of the former act imposes a maximum penalty of £20 on skippers who are guilty of offences of the character described in s. 164 of the latter.

(q) 25 & 26 Vict. c. 63, s. 15.

(r) As to the necessity for producing the agreement to the chief officer of Customs, or the British Consular officer (as the case may be) on arrival at a port abroad, see 17 & 18 Vict. c. 104, s. 379; *supra* § 225.

(s) 43 & 44 Vict. c. 16.

(t) 21 & 22 Vict. c. 106, ss. 1, 64.

or other person who has bound himself by any such contract is, on arriving in any of the said colonies, required to enter into an agreement to serve as a seaman in any ship bound for the United Kingdom or to any other part of Her Majesty's dominions, and if it is certified by some officer appointed for that purpose by the governor of the said colony that such agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original contract, and that the ship to which such agreement relates is a proper ship for such Lascar or other person to serve in, and is properly supplied with provisions, and that there is not in the opinion of such officer any objection to the full performance of the said contract, such Lascar or other person shall be bound to enter into the said agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and if he refuses to enter into such agreement he shall, notwithstanding such refusal, be liable to the same consequences, and be dealt with in all respects in the same manner, as if he had voluntarily entered into the same; and for every Lascar or other person in respect of whom such certificate is applied for the person applying for the same shall pay to such officer as aforesaid such fee as the governor of the colony may appoint.

The Merchant Shipping Act Amendment Act, 1855,(*u*) permits, in almost identical terms, the engagement of Lascars and natives of India under agreements binding them to proceed to ports in the United Kingdom, and there to enter into a further agreement to serve in any ship which may happen to be there, and to be bound to any port in India. The certifying officer is appointed, and his fee, which in this case may not exceed ten shillings, fixed, by the Secretary of State for India in Council.(*x*)

Provision has been made for the protection and relief of destitute Lascars and other "native" seamen found in the United Kingdom. The enactments relating to this subject are referred to below.(*y*)

Advance and Allotment of Wages.

Advance of more than half wages forbidden.

§ 483. The advance of wages to seamen has long been the subject of legislation, and an enactment (*r*) is still unrepealed whereby masters and owners are forbidden (under penalty of forfeiting to the informer double the amount advanced) to make to any seaman, while beyond the seas, any advance exceeding one moiety of the wages due at the time of making it, until the return of the ship to the United Kingdom, or the place to which she belongs. The reason for this provision is stated in the recital to be the prevention of desertion or piracy. Later legislation on this subject has been dictated by a desire to protect seamen from imposition and their own improvidence.

(*u*) 18 & 19 Vict. c. 91, s. 23.
(*x*) 22 & 23 Vict. c. 106, ss. 1, 64.
(*y*) *Infra*, § 491.
(*r*) 8 Geo. IV. c. 24, s. 7.

By a recent statute,(s) advance notes authorising the payment of money conditionally upon the seaman's going to sea, were made illegal. This statute has, however, been repealed, and by the Merchant Shipping Act, 1889,(t) such notes are authorised, subject to certain restrictions, as follows:

Restrictions on advance notes.

2.—(1) Any agreement with a seaman made under section one hundred and forty-nine of the Merchant Shipping Act, 1854, may contain a stipulation for payment to or on behalf of the seaman, conditionally on his going to sea in pursuance of the agreement, of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement.

(2) Save as authorised by this section, any agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in the United Kingdom shall be void, and no money paid in satisfaction or in respect of any such agreement shall be deducted from the seaman's wages, and no person shall have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

(3) Nothing in this section shall affect any allotment made under the Merchant Shipping Act, 1854, or the Acts amending the same.

Advance note not negotiable.

An advance note is not a negotiable instrument upon which a transferee can sue in his own name.(u)

§ 484. The allotment of seamen's wages during their absence is the subject of the following sections of the principal Act:(x)

Regulations as to allotment notes.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade.

Allotment notes may be sued on summarily by certain persons and under certain conditions.

169. The wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorised the drawing of the note,(y) either in the County Court or in the summary manner in which seamen are by this Act (z) enabled to sue for and recover wages not exceeding fifty pounds; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner, or by the master, or some other authorised agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either by the official statement of the change in the crew

(s) 43 & 44 Vict. c. 16, s. 2.
(t) 52 & 53 Vict. c. 46.
(u) *Cardiff Boarding Masters, &c.*, v. *Cory*, 9 T. L. R. 405.
(x) 17 & 18 Vict. c. 104.
(y) The registered owner of a ship under time charter is not liable on a note drawn by the master upon the charterer who appointed him; *Meiklereid* v. *West*, 1 Q. B. D. 428.
(z) S. 188; *infra* § 516.

caused by his absence made and signed by the master, as by this Act (*a*) is required, or by a duly certified copy of some entry in the official log-book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid: provided that the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereupon forfeit all right to further payments of any allotment of his wages which has been made in her favour.

The provisions of the foregoing section are extended by the Merchant Shipping (Wages and Rating) Act, 1880,(*b*) as follows:

Amendment of 17 & 18 Vict. c. 104, s. 169, as to allotment notes.

3.—(1) Every agreement with a seaman which is required by the Merchant Shipping Act, 1854, to be made in the form sanctioned by the Board of Trade shall, if the seaman so require, stipulate for the allotment of any part not exceeding one half of the wages of the seaman in favour of one or more of the persons mentioned in section one hundred and sixty-nine of the Merchant Shipping Act, 1854, as amended by this section.

Allotment may be in favour of savings bank.

(2) The allotment may also be made in favour of a savings bank, and in that case shall be in favour of such persons and carried into effect in such manner as may be for the time being directed by regulations of the Board of Trade, and section one hundred and sixty-nine of the Merchant Shipping Act, 1854, shall be construed as if the said persons were named therein.

Payment out of savings bank.

(3) The sum received in pursuance of such allotment by a savings bank shall be paid out only on an application made through a superintendent of a mercantile marine office or the Board of Trade, by the seaman himself, or, in case of death, by some person to whom the same might be paid under section one hundred and ninety-nine (*c*) of the Merchant Shipping Act, 1854.

(4) A payment under an allotment note shall begin at the expiration of one month, or, if the allotment is in favour of a savings bank, of three months, from the date of the agreement, or at such later date as may be fixed by the agreement, and shall be paid at the expiration of every subsequent month, or of such other periods as may be fixed by the agreement, and shall be paid only in respect of wages earned before the date of payment.

(5) For the purposes of this section "savings bank" means a savings bank established under one of the Acts mentioned in the First Schedule to this Act.(*d*)

Discharge and Payment of Wages.(*e*)

Discharge by the master.

§ 485. In considering when he is entitled to discharge a seaman, the master must always bear in mind the terms of the agree-

(*a*) S. 158; *supra* § 475.
(*b*) 43 & 44 Vict. c. 16.
(*c*) *Infra* § 520.
(*d*) Viz., 24 & 25 Vict. c. 14; 26 & 27 Vict. c 87; 17 & 18 Vict. c. 104, s. 180; 19 & 20 Vict. c. 41; and see *infra* §§ 492, 493.
(*e*) By 17 & 18 Vict. c. 104, s. 109; "So much of the third part of this Act" [the part entitled "Masters and Seamen"] "as relates to rights to wages and remedies for the recovery thereof; to the shipping and discharge of seamen in foreign ports; to leaving seamen abroad, and to the relief of seamen in distress in foreign ports; to the provisions, health, and accommodation of seamen; to the power of seamen to make complaints; to the protection of seamen from imposition; to discipline; to naval courts on the high

ment (*f*) by which he has contracted to employ the seaman; and also the requirements (*g*) of the Merchant Shipping Acts, which render the master liable to severe penalties if he discharges the seaman either at home or abroad without complying with their provisions.

For habitual misconduct.

Bearing in mind the requisites of the statutes, the master has the right to discharge a seaman for just cause, and put him ashore in a foreign country; but the cause must be, not slight, but aggravated, such as habitual inattention to the ordinary duties of his station, habitual disobedience, mutinous conduct, theft, or habitual and not mere occasional drunkenness; or any misconduct which renders the discharge imperatively necessary for the safety of the ship and the preservation of necessary discipline.(*h*) But the master and owner are liable to compensate any seaman who is discharged without just cause.(*i*) If a master chose to turn a mariner on shore, without cause, in a foreign country, the mere refusal to go would not of itself justify an improper discharge. The propriety of the refusal in such a case must depend entirely on the propriety of the order, and that must depend almost entirely upon its necessity, for little less than absolute necessity is required to bear out such an order.(*k*)

On shipwreck.

§ 486. On the wreck of a ship, the seamen's contract of service is terminated, either by the final abandonment of the ship, without hope of recovery; or by the master giving the seamen a discharge, after they have done all that was reasonably possible in trying to save ship and cargo. In either of these cases, the voyage contracted for is at an end. And even if the master, in discharging the seamen, is improperly disregarding the interests of the owners, the discharge is nevertheless valid as against them, unless the seamen are proved to have fraudulently accepted it.(*l*)

Where a casualty happens to a ship, which, though short of a total wreck, is of so serious a nature that it is doubtful whether she can be repaired at all; or where it is clear that great delay will be necessary to put her in a state of repair, the master has

seas and abroad; and to crimes committed abroad; shall apply to all ships registered in any of Her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective governments, and to the owners, masters, and crews of such ships." And see § 3, note (*m*), *supra*. As to the application of the Act to the engagement and discharge of seamen in the United Kingdom, see § 473, note (*y*) *supra*.

(*f*) *Supra* § 474 *et seq.*

(*g*) Set out *infra* § 487.

(*h*) *The Exeter*, 2 C. Rob. 261; *The Blake*, 1 W. Rob. 73; *Renno* v. *Bennett*, 3 Q. B. 768; per Montague Smith, J., *Button* v. *Thompson*, L. R. 4 C. P. 343. The promotion of insubordination by an officer will justify his dismissal; *The Marina*, 50 L. J., Ad. 33. There appears to be no difference between our law and that of the United States in these respects. See 3 Kent's Comm. 261.

(*i*) 17 & 18 Vict. c. 104, s. 167; *infra* §§ 496, 498.

(*k*) Per Sir W. Scott, *The Exeter*, 2 C. Rob. 272. Wrongfully to force him on shore is a misdemeanour, 17 & 18 Vict. c. 104, s. 206; *infra* § 489.

(*l*) *The Warrior*, Lush. 476; and see 17 & 18 Vict. c. 104, s. 185; *infra* § 497.

an implied authority to abandon the voyage and discharge the crew.

Capture discharges the seamen.

If the ship is captured by an enemy, the crew are discharged from their duty to their employers, from the moment the capture is effected; and the contract is at an end.(*m*)

Unfitness of seaman to proceed.

The service of a seaman may also be terminated, before the period contemplated by the agreement, by reason of his being left on shore at any place abroad, under a certificate of his unfitness or inability to proceed on the voyage.(*n*)

§ 487. The Merchant Shipping Act, 1854,(*o*) provides as follows with reference to the discharge of seamen:

Discharge from foreign-going ships to be made before shipping master.

170. In the case of all British foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom shall be discharged and receive their wages in the presence of a [Marine Office superintendent](*oo*) duly appointed under this Act, except in cases where some competent court otherwise directs; and any master or owner of any such ship who discharges any seaman belonging thereto, or, except as aforesaid, pays his wages within the United Kingdom in any other manner, shall incur a penalty not exceeding ten pounds; and in the case of home-trade ships seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

Master to deliver account of wages.

171. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a [Marine Office superintendent], to such [superintendent or to the seaman himself at or before the time when he leaves the ship],(*p*) a full and true account in a form sanctioned by the Board of Trade of his wages and of all deductions (*q*) to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding five pounds; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered;(*r*) and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur in a book to be kept for that purpose, and shall, if required, produce such book at the time of the

(*m*) Per Lord Stowell, *The Governor Raffles*, 2 Dods. at p. 17.

(*n*) 17 & 18 Vict. c. 184, ss. 185, 205, 207, 209; *infra* §§ 489, 497.

(*o*) 17 & 18 Vict. c. 104.

(*oo*) 25 & 26 Vict. c. 63, s. 15.

(*p*) The words following the word superintendent in this extract express the effect of 43 & 44 Vict. c. 16, s. 4 (2).

(*q*) The Board of Trade form "divides these deductions into two heads, forfeitures, and other deductions. Forfeitures point to such matters as are referred to in s. 243 (§ 508 *infra*) of the Act. Deductions point to such matters as sums deducted for families under s. 192 (§ 518 *inf.*), or sums deducted for medical expenses under s. 228 (4) (§ 526 *inf.*), and other matters of that kind." The word "deduction" does not include a "reduction" of wages, consequent upon disrating by way of punishment for misconduct. *The Highland Chief*, (1892) P. 76; see per Jeune, J., at p. 79.

Account of wages in case of fishing boats.

(*r*) The corresponding section of the Merchant Shipping (Fishing Boats) Act, 1883 (46 & 47 Vict. c. 41, s. 24), stops at the word "delivered." The account is to be delivered to the seaman (who need not be discharged before a superintendent) only if he does not give notice that he does not require it, and where he is not paid by a "share in the catch." In the latter cases he is entitled (s. 25), in case of dispute, to inspect the owners' accounts and books. For refusal to submit them upon demand made at a reasonable time, the owner incurs a maximum penalty of £20.

payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payments.

On discharge, masters to give seamen certificates of discharge, and return certificates of competency or service to mates.

172. Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give him a certificate of his discharge, in a form sanctioned by the Board of Trade, specifying the period of his service and the time and place of his discharge; and if any master fails(*s*) to sign and give to any such seaman such certificate of discharge, he shall for each such offence incur a penalty not exceeding ten pounds;(*t*) and the master shall also, upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding twenty pounds.

Superintendent may decide questions which parties refer to him.

173. Every [Marine Office superintendent] shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any court of justice be deemed to be conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *primâ facie* evidence thereof.

This provision has been extended by s. 4 (5) of the Merchant Shipping (Wages and Rating) Act, 1880,(*u*) as follows:

Where a question as to wages is raised before the superintendent of a mercantile marine office between the master or owner of a ship, and a seaman or apprentice, if the amount in question does not exceed five pounds, the superintendent may adjudicate, and the decision of the superintendent in the matter shall be final; but if the superintendent is of opinion that the question is one which ought to be decided by a court of law he may refuse to decide it.

The principal Act proceeds:

Master and others to produce ship's papers to Marine Office superintendents, and give evidence.

174. In any proceeding relating to the wages, claims, or discharge of any seaman carried on before any [Marine Office superintendent] under the provisions of this Act, such [superintendent] may call upon the owner or his agent, or upon the master or any mate or other member of the crew, to produce any logbooks, papers, or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter; and every owner, agent, master, mate, or other member of the crew who when called upon by the [superintendent] does not produce any such paper or document as aforesaid, if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding five pounds.

Settlement of wages.

175. The following rules shall be observed with respect to the settlement of wages (*x*) (that is to say):

(*s*) No action lies for a breach of this duty, but the penalty may be applied in compensating the seaman under s. 524 (*infra* § 548).

(*t*) The Fishing Boats Act (46 & 47 Vict. c. 41, s. 26) imposes a penalty of £5. The provision with respect to certificated mates is incorporated by s. 39 of that Act.

(*u*) 43 & 44 Vict. c. 16.

(*x*) As to the period within which wages are to be settled, and the conse-

Release to be signed before and attested by the superintendent;

(1) Upon the completion before a [Marine Office superintendent] of any discharge and settlement, the master or owner and each seaman shall respectively in the presence of the [superintendent] sign in a form sanctioned by the Board of Trade a mutual release of all claims in respect of the past voyage or engagement, and the [superintendent] shall also sign and attest it, and shall retain and transmit it as herein directed:

to be discharge;

(2) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement: (y)

and to be evidence.

(3) A copy of such release certified under the hand of such superintendent to be a true copy shall be given by him to any party thereto requiring the same; and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy:

No other receipt to be a discharge.

(4) In cases in which discharge and settlement before a [Marine Office superintendent] are hereby required, no payment, receipt, settlement, or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim:

Voucher to be given to master, and to be evidence.

(5) Upon any payment being made by a master before a [Marine Office superintendent], the [superintendent] shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall as between the master and his employer be received as evidence that he has made the payments therein mentioned.

The foregoing section has been modified by the Merchant Shipping (Wages and Rating) Act, 1880,(z) as follows:

4. (3.) If the seaman consents, the final settlement of his wages may be left to the superintendent of a mercantile marine office under regulations to be made by the Board of Trade, and the receipt of the superintendent shall in that case operate as a release by the seaman under section one hundred and seventy-five of the Merchant Shipping Act, 1854.

And with respect to the payment of seamen in foreign money the Merchant Shipping Act, 1889, contains the following section:

Rule as to payment of British seamen in foreign money.

4. Where a seaman has agreed with the master of a British ship for payment of his wages in British sterling or any other money, any payment of, or on account of, his wages if made in any other currency than that stated in the agreement, shall, notwithstanding anything in the agreement, be made at the rate of exchange for the money stated in

quences of delay, see 17 & 18 Vict. c. 104, s. 187, and 43 & 44 Vict. c. 16, s. 4 (1), (4); *infra* § 495.

(y) This statutory release is conclusive at Common Law upon all the parties to it against any demand arising out of the same voyage or engagement; and Equity will not relieve against it, except upon evidence that fraudulent advantage was taken of ignorance (*Stanes* v. *Parker*, 9 Beav. 385); or that items, important enough to induce the Court to reopen the account, have been omitted through mistake (*Pritt* v. *Clay*, 6 Beav. 503). It is too late, therefore, after this for seaman to sue on some additional claim for wages, if he has released the owner on payment of a lesser amount; Maclachlan, 4th ed. 230.

(z) 43 & 44 Vict. c. 16.

the agreement for the time being current at the place where the payment is made.(a)

The principal Act proceeds:—

Master to make reports of character.

176. Upon every discharge effected before a [Marine Office superintendent] the master shall make and sign in a form sanctioned by the Board of Trade a report of the conduct, character, and qualifications of the persons discharged, or may state in a column to be left for that purpose in the said form that he declines to give any opinion upon such particulars or upon any of them; and the [superintendent] shall transmit the same to the Registrar-General of Seamen, or to such other person as the Board of Trade directs, to be recorded, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him; and every person who makes, assists in making, or procures to be made, any false certificate or report of the service, qualifications, conduct, or character of any seaman, knowing the same to be false, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or report, or who fraudulently makes use of any certificate or report, or of any copy of any certificate or report which is forged or altered or does not belong to him, shall for each such offence be deemed guilty of a misdemeanor.

Protection of Seamen left Abroad, and of Foreign Seamen in this Country.

Discharge by Naval Court.

§ 488. As we have seen,(b) a naval court, duly constituted, may discharge any seaman from his ship; order the wages, or any part of them, of any seaman so discharged to be forfeited, and may decide any questions as to wages, fines, or forfeitures, arising between any of the parties to the proceedings before it.

By consul.

A complete discharge may also be effected by the act of a consul in sending a seaman home for the purposes of justice. In *Melville* v. *De Wolf*,(c) a seaman signed articles for a voyage from Liverpool to ports in America. During the voyage the master shot one of the crew, and the ship was taken into Monte Video, and the consul there, in pursuance of 7 & 8 Vict. c. 112, ss. 59, 60,(d) sent the master to England for trial, with the witnesses, the plaintiff being one.

It was held that the plaintiff having been separated from the ship at a foreign port by authority of the British Legislature, and sent to England without any reasonable possibility of his ever being able to rejoin the ship during the voyage, the agreement must be considered as dissolved by the supreme authority of the

(a) Formerly where seamen were to be paid in dollars, and the dollar was depreciated, it was held that sterling value was intended, and wages were to be paid at 4*s.* 2*d.* per dollar; *The Annie Sherwood*, 12 L. T. N. S. 582; *The Nonpareil*, B. & L. 355.

(b) *Supra* § 11; 17 & 18 Vict. c. 104, s. 263.

(c) 4 E. & B. 844.

(d) See now 17 & 18 Vict. c. 104, s. 268; *infra* § 538.

state, which was binding on both parties, and that the seaman had no claim to wages for the period subsequent to the date when he was sent home.

§ 489. The following sections of the Merchant Shipping Act, 1854, relate to the discharge of seamen in foreign countries:(*e*)

On discharge of seamen abroad, by sale of ship or otherwise, certificates of discharge to be given, and seamen to be sent home at expense of owner.

205. Whenever any British ship is transferred or disposed of at any place out of Her Majesty's dominions, and any seaman or apprentice belonging thereto does not in the presence of some British consular officer, or, if there is no such consular officer there, in the presence of one or more respectable British merchants residing at the place and not interested in the said ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice belonging to any British ship terminates at any place out of Her Majesty's dominions, the master shall give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade as aforesaid, and in the case of any certificated mate whose certificate he has retained shall return such certificate to him, and shall also, besides paying the wages to which such seaman or apprentice is entitled, either provide him with adequate employment on board some other British ship bound to the port in Her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him with a passage home, or deposit with such consular officer or such merchant or merchants as aforesaid such a sum of money as is by such officer or merchants deemed sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall indorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of such payment, provision, or deposit; and if the master refuses or neglects to comply with the requirements of this section, such expenses as last aforesaid if defrayed by such consular officer or by any other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge upon the ship to which such seaman or apprentice belonged and upon the owner for the time being thereof, and may be recovered against such owners, with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public monies, as a debt due to Her Majesty either by ordinary process of law, or in the manner in which seamen are hereby enabled to recover wages; and such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him.

Forcing seamen on shore a misdemeanor.

206. If the master or any other person belonging to any British ship wrongfully forces on shore and leaves behind, or otherwise wilfully and wrongfully leaves behind, in any place, on shore or at sea, in or out of Her Majesty's dominions, any seaman or apprentice belonging to such ship before the completion of the voyage for which such person was engaged or the return of the ship to the United Kingdom, he shall for each such offence be deemed guilty of a misdemeanor.

No seamen to be discharged or left abroad without certificate of some functionary.

207. If the master of any British ship does any of the following things; (that is to say):

(1) Discharges any seaman or apprentice in any place situate in any British possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in

(*e*) See § 485, note (*e*) *supra*.

writing indorsed on the agreement of some public [Marine Office superintendent](*f*) or other officer duly appointed by the local government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place;

(2) Discharges any seaman or apprentice at any place out of Her Majesty's dominions without previously obtaining the sanction so indorsed as aforesaid of the British consular officer there, or (in his absence) of two respectable merchants resident there;

(3) Leaves behind any seaman or apprentice at any place situate in any British possession abroad on any ground whatever, without previously obtaining a certificate in writing so indorsed as aforesaid from such officer or person as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion(*g*), or disappearance;

(4) Leaves behind any seaman or apprentice at any place out of Her Majesty's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate indorsed in manner and to the effect last aforesaid(*g*) of the British consular officer there, or (in his absence) of two respectable merchants, if there is any such at or near the place where the ship then is:

He shall for each such default be deemed guilty of a misdemeanor; and the said functionaries shall and the said merchants may examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion, or disappearance as aforesaid, in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

Proof of such certificate to be upon the master.

208. Upon the trial of any information, indictment, or other proceeding against any person for discharging or leaving behind any seaman or apprentice, contrary to the provisions of this Act, it shall lie upon such person either to produce the sanction or certificate hereby required, or to prove that he had obtained the same previously to having discharged or left behind such seaman or apprentice, or that it was impracticable for him to obtain such sanction or certificate.

Wages to be paid when seamen are left behind on ground of inability.

209. Every master of any British ship who leaves any seaman or apprentice on shore at any place abroad in or out of Her Majesty's dominions, under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries aforesaid, or (in the absence of such functionaries) to the merchants by whom such certificate is signed, or, if there be but one respectable merchant resident at such place, to him, a full and true account of the wages due to such seaman or apprentice, such account when delivered to a consular officer to be

(*f*) 25 & 26 Vict. c. 63, s. 15.

(*g*) By s. 249, "In all cases of desertion from any ship in any place abroad, the master shall produce the entry of such desertion in the official log-book" (see ss. 244, 282; *supra* § 124) "to the person or persons hereby required to indorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry, and also a copy of the said certificate of desertion; and if such person is a public functionary he shall, and in other cases the said master shall, forthwith transmit such copies to the Registrar-General of Seamen in England; and the said Registrar shall, if required, cause the same to be produced in any legal proceeding; and such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the said Registrar, shall in any legal proceeding relating to such desertion, be received as evidence of the entries therein appearing."

in duplicate, and shall pay the same either in money or by a bill drawn upon the owner [provided that the payment shall whenever practicable be made in money and not by bill]; (*h*) and in the case of every bill so drawn, such functionary, merchants or merchant as aforesaid, shall by indorsement certify thereon that the same is drawn for money due on account of a seaman's wages, and shall also indorse the amount for which such bill is drawn, with such further particulars in respect of the case as the Board of Trade requires, upon the agreement of the ship; and every such master as aforesaid who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill, as hereinbefore required, shall for every such offence or default be liable, in addition to the payment of the wages, to a penalty not exceeding ten pounds; and every such master who delivers a false account of such wages shall for every such offence, in addition to the payment of the wages, incur a penalty not exceeding twenty pounds.(*i*)

Such wages to be treated as money due to the seamen, subject to payment of expense of their subsistence and passage home.

210. Every such payment as last aforesaid, whether by bill or in money, shall, if made in any British possession, be made to the seaman or apprentice himself, and, if made out of Her Majesty's dominions, to the consular officer, who shall, if satisfied with the account, indorse on one of the duplicates thereof a receipt for the amount paid or bill delivered, and shall return the same to the master; and the master shall, within forty eight hours after his return to his port of destination in the United Kingdon, deliver the same to the [Marine Office superintendent] there; and the consular officer shall retain the other duplicate of the said account, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions herein contained, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and shall also deliver to him an account of the sums so received and expended on his behalf; and shall if the seaman or apprentice dies before his ship quits the port, deal with the same in the manner hereinafter (*j*) specified in that behalf, and shall, if the seaman or apprentice is sent home at the public expense under the provisions herein contained, account for the amount received to the Board of Trade; and such amount shall, after deducting any expenses which have been duly incurred in respect of such seaman or apprentice, except such as the master or owner of the ship is hereby required to pay, be dealt with as wages to which he is entitled, and shall be paid accordingly.

§ 490. The relief of seamen in distress at any place abroad is provided for by the following sections:

Evidence in proceeding on bill drawn under section 209.

(*h*) The words in brackets are in effect added by 25 & 26 Vict. c. 63, s. 19, which further enacts that where payment is made by bill drawn by the master, the owner shall be liable to pay the amount of the bill to the holder or indorsee thereof; and dispenses with proof as against the owner that the master had authority to draw the same; and provides that any bill purporting to be drawn and indorsed in pursuance of the above section, if produced out of the custody of the Board of Trade or of the Registrar-General of Seamen, or of any Marine Office superintendent, shall be received in evidence; and that any indorsement purporting to be made in pursuance of the said section, and to be signed by one of the functionaries therein mentioned, shall be received in evidence, and be *primâ facie* evidence of the facts stated in such indorsement.

(*i*) This section is an additional protection to the seaman; it does not curtail his lien, nor affect the rights conferred on the master by s. 191; *The Rajah of Cochin*, Sw. 473.

(*j*) *Infra*, § 519.

211. The governors, consular officers, and other officers of Her Majesty in foreign countries shall, and in places where there are no such governors or officers any two resident British merchants may, provide for the subsistence of all seamen or apprentices, being subjects of Her Majesty, who have been shipwrecked, discharged, or left behind at any place abroad, whether from any ship employed in the merchant service or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power or to the subject of any foreign state, and who are in distress in any place abroad, until such time as they are able to provide them with a passage home, and for that purpose shall cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty bound to any port of the United Kingdom, or to the British possession to which they belong, (as the case requires,) which is in want of men to make up its complement, and in default of any such ship shall provide them with a passage home as soon as possible in some ship belonging to a subject of Her Majesty so bound as aforesaid, and shall indorse on the agreement of any ship on board of which any seaman or apprentice is so taken or sent the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires, and shall be allowed for the subsistence of any such seaman or apprentice such sum per diem as the Board of Trade from time to time appoints; and the amount due in respect of such allowance shall be paid . . . . on the production of the bills of the disbursements, with the proper vouchers.(*k*)

Distressed seamen found abroad may be relieved and sent home at the public expense.

212. The master of every British ship so bound as aforesaid shall receive and afford a passage and subsistence to all seamen or apprentices (*l*) whom he is required to take on board his ship under the provisions hereinbefore contained, not exceeding one for every fifty tons burden, and shall during the passage provide every such seaman or apprentice with a proper berth or sleeping place effectually protected against sea and weather; and on the production of a certificate signed by any governor, consular officer, or merchants by whose directions any such seaman or apprentice was received on board, specifying the number and names of such seamen or apprentices, and the time when each of them respectively was received on board, and on a declaration made by such person before a justice, and verified by the Registrar General of seamen, stating the number of days during which each seaman or apprentice received subsistence and was provided for as aforesaid on board his ship, and stating also the number of men and boys forming the complement of his crew, and the number of seamen and apprentices employed on board his ship during such time, and every variation (if any) of such number, such person shall be entitled to be paid out of the said monies applicable to the relief of distressed British seamen,(*m*) in respect of the subsistence and passage of every seaman or apprentice so conveyed, subsisted, and provided for by him exceeding the number (if any) wanted to make up the complement of his crew, such sum per diem as the Board of Trade from time to time appoints; and if any person having charge of any such ship fails or

Masters of British ships compelled to take them.

(*k*) The words omitted are repealed by 45 & 46 Vict. c. 55, s. 10. By s. 3 (*e*) of that Act allowances and expenses paid for the relief of distressed British seamen and apprentices are to be charged on and payable out of the Mercantile Marine fund. Consuls are entitled to credit for such disbursements under 6 Geo. IV., c. 87, s. 18.

(*l*) They are to be subject to the same discipline as the members of the crew; 17 & 18 Vict. c. 104, s. 245; § 543 *infra*.

(*m*) See 45 & 46 Vict. c. 55, s. 3 (*e*); note (*k*) *supra*.

refuses to receive on board his ship, or to give passage home, or subsistence to, or to provide for any such seaman or apprentice as aforesaid, contrary to the provisions of this Act, he shall incur a penalty not exceeding one hundred pounds for each seaman or apprentice with respect to whom he makes such default or refusal.(*n*)

The Merchant Shipping Act Amendment Act, 1855,(*n*) enacts:

16. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices, in pursuance of the 211th and 212th sections of the Merchant Shipping Act, 1854, and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered. . . . And all provisions concerning the relief of distressed seamen and apprentices, being subjects of Her Majesty, which are contained in the said sections of the said Act, and in this section, shall extend to such seamen and apprentices, not being subjects of Her Majesty, as are reduced to distress in foreign parts, by reason of their having been shipwrecked, discharged, or left behind from any British ship; subject nevertheless to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances, think fit to make and issue.

And the Merchant Shipping Act, 1862,(*o*) after reciting that doubts were entertained as to the power of making regulations and conditions for preventing desertion and misconduct, and the undue expenditure of public money, proceeds:

22. . . . . the claims of seamen to be relieved or sent home in pursuance of the said sections or any of them, shall be subject to such regulations and dependent on such conditions as the Board of Trade may from time to time make or impose, and no seaman shall have any right to demand to be relieved or sent home, except in the cases and to the extent provided for by such regulations and conditions.

The principal Act continues:

Power to sue for the amount advanced for the relief of seamen left abroad.

213. If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom without full compliance on the part of the master with all the provisions in that behalf in this Act contained, and becomes distressed and is relieved under the provisions of this Act, or if any subject of Her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed and is relieved as aforesaid, the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid; and the Board of Trade may in the name of Her Majesty (besides suing for any penalties which may have been incurred) sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such

(*n*) 18 & 19 Vict. c. 91, s. 16. (*o*) 25 & 26 Vict. c. 63.

master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to Her Majesty, or in the same manner and by the same form and process in which wages due to the seaman would be recoverable by him; and in any proceedings for that purpose production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade or by any Paymaster General of the charges incurred on account of any such seaman, apprentice, or other person, shall be sufficient evidence that he was relieved, conveyed home, or buried (as the case may be) at Her Majesty's expense.

The operation of the foregoing section has been extended by 18 & 19 Vict. c. 91 (the Act of 1855), as follows:

16. . . . . And all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the 213th section of the said Act are given to the Board of Trade, shall extend to all expenses incurred by any foreign government for the purposes aforesaid, and repaid to such government by Her Majesty's Government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as British ships.

All sums recovered under these sections are to be accounted for and carried to the Mercantile Marine Fund.(*p*)

§ 491. The following enactments relate to seamen, natives of certain remote countries, who may be in distress in the United Kingdom. By the Merchant Shipping Repeal Act, 1854:(*q*)

Penalty on master of ship leaving certain seamen in distress in this country.

16. If a native of any country in Asia, Africa, or any of the islands in the South Sea, or the Pacific Ocean, or of any other country not having any consul in the United Kingdom, is brought to the United Kingdom in any ship, British or foreign, as a seaman, and is left in the United Kingdom, and within six months of his being so left becomes chargeable upon the poor-rate, or commits any act by reason of the committal whereof he is liable to be convicted as an idle or disorderly person, or, any other act of vagrancy, the master, or owner of the said ship, or in case of a foreign ship, the person who is consignee of the ship, at the time of the seaman being so left as aforesaid, shall incur a penalty not exceeding thirty pounds, unless he can show that the person so left as aforesaid quitted the ship without the consent of the master or that due means have been afforded by such master, owner, or consignee, or one of them, to such person of returning to his native country, or to the country in which he was shipped, and the Court inflicting such penalty may order the whole or any part of such penalty to be applied towards the relief or sending home of such person.

With regard to Lascars, the statute 4 Geo. iv. c. 80, s. 31, in cases where any Asiatic sailor, Lascar, or native of India (*r*) is convicted of any act of vagrancy, empowers the justice or justices before whom the conviction takes place, to order the defendant to be shipped on board any vessel bound to the place, or as near

(*p*) 45 & 46 Vict. c. 55, s. 4 (*e*).
(*q*) 17 & 18 Vict. c. 120.
(*r*) See 21 & 22 Vict. c. 106 (The Government of India Act, 1858), ss. 1, 64.

as may be to the place, to which he belongs, or from which he has been brought, at the expense of the person liable under rules to be made by the Governor-General in Council (see s. 25 of the same Act), and requires the master to keep such vagrant on board for the voyage for which he was shipped. Section 34 empowers the Secretary of State for India in Council (*s*) to relieve Lascars and native sailors found in the United Kingdom in distress, and to advance the money necessary to procure their passage home, and to recover the same from the master or owners of the ship on board which such persons were brought into the United Kingdom. But these sections, though still in force, would seem to be in effect superseded by the Merchant Shipping Amendment Act, 1855,(*t*) which casts the duty of providing relief upon the Secretary of State in Council,(*s*) as follows:

Relief of the destitute Lascars.

It shall be the duty of the [Secretary of State for India in Council] (*s*) to take charge of and send home or otherwise provide for all persons, being Lascars or other natives of [India],(*s*) who are found destitute in the United Kingdom; and if any such person is relieved and maintained by any guardians, overseers, or other persons administering the relief of the poor, such overseers, guardians, or other persons may, by letter sent through the post or otherwise, give notice thereof in writing to the Secretary of [State for India in Council], specifying, so far as is practicable, the following particulars, viz.:—

1. The name of the person so relieved or maintained:
2. The presidency or district or part of [India] of which he professes to be a native:
3. The name of the ship in which he was brought to the United Kingdom:
4. The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived, when he was brought to the United Kingdom, and the time of such arrival:

And the said [Secretary of State] shall repay to the said overseers guardians, or other persons, out of the revenues of the said [Secretary of State in Council], all monies duly expended by them in relieving or maintaining such destitute person, after the time at which such notice aforesaid is sent or otherwise given.(*s*)

Remittance of Wages,(u) and Savings Bank for Seamen.

Wages may be remitted by money orders.

§ 492. The Merchant Shipping Act, 1854, s. 177, empowers the Board of Trade to direct facilities to be given for remitting the wages and other monies of seamen and apprentices by means of money orders issued by Marine Office superintendents, and to make and alter regulations concerning such orders, and the persons by or to whom they are to be paid, and the mode and time of payment; and exempts the Board and all

(*s*) See 21 & 22 Vict. c. 106 (The Government of India Act, 1858), ss. 1, 41 *et seq.*, 64.

(*t*) 18 & 19 Vict. c. 91, s. 22.

(*u*) As to the advance and allotment of wages, see §§ 483, 484 *supra*.

Marine Office superintendents or other public officers employed about such orders, from any legal proceeding on account of any such regulations, or on anything done or omitted in pursuance thereof, or on account of any refusal, neglect, or omission not arising from fraud or wilful misbehaviour, to pay any such money order.

Sec. 178 empowers the Board to pay the amount of any lost order to the payee, or his personal representatives, and relieves the Board and its officers and Marine Office superintendents from all liability in respect of such order.

Fraudulent issue of orders, felony.

The fraudulent issue by a Marine Office superintendent or other public officer of a money order is felony, punishable with penal servitude not exceeding four years.(*x*)

Seamen's savings banks may be established.

§ 493. Power was, by the Merchant Shipping Act, 1854,(*y*) given to the National Debt Commissioners, or the Controller-General acting under them, to establish, on the application of the Board of Trade, in Mercantile Marine offices or elsewhere, saving banks for seamen; to appoint, and if necessary remove, treasurers with the duty of receiving from seamen, their wives, and families, deposits not exceeding in all £150; and to make regulations binding on depositors and treasurers. This enactment was afterwards extended to seamen in the Royal Navy.(*z*) And a year later was to a large extent, if not entirely, superseded by the Seamen's Savings Bank Act, 1856.(*a*)

The latter statute, after reciting that it is expedient to place the immediate control of such savings banks in the hands of the Board of Trade, enables (s. 1) that Board to establish in London a central savings bank for seamen, with such branches elsewhere as they may think expedient, and to receive deposits from seamen, their wives and families, not exceeding in all £200.(*b*) By sec. 2 the Board may constitute a Mercantile Marine office a branch bank, and may impose upon the superintendent the duties of their agent for the purpose. Sec. 3 deals with the receipt and investment of deposits by the National Debt Commissioners at the request of the Board. Sec. 4 empowers the Board to make and alter regulations with respect, *inter alia*, to the persons entitled to become depositors, the amount of deposits or the rate of interest, and generally for the purpose of carrying the Act into execution, and relieves the Board and its officers from any legal proceedings "on account of any such regulations, or . . . . of any act done or left undone in pursuance thereof, or on account of any refusal, neglect, or omission to pay any deposit or interest

(*x*) 17 & 18 Vict. c. 104, s. 179.
(*y*) 17 & 18 Vict. c. 104, s. 180.
(*z*) 18 & 19 Vict. c. 91, s. 17.
(*a*) 19 & 20 Vict. c. 41.
(*b*) Deposits may be made by means of allotment notes, and withdrawn, as provided by 43 & 44 Vict. c. 16, s. 3 (2)–(5), and Sched.; *supra* § 484.

thereon," unless arising from "fraud or wilful misbehaviour." By sec. 5, money due from the Board to the estate of any deceased person entitled to any deposit is to be applied in the same manner as the money and effects of deceased seamen under the Merchant Shipping Act, 1854.(*c*) By sec. 6, any one who, for the purpose of obtaining deposited money or interest thereon, forges or fraudulently alters any document, or knowingly uses any forged or altered document, or gives any false evidence, or makes any false representation, is guilty of felony, punishable by four years' penal servitude, or in case of summary conviction, by six months' imprisonment, as a maximum. Sec. 9 assimilates criminal proceedings under this Act to those under the Merchant Shipping Act, 1854.(*d*) Secs. 7 and 8 provide for the expenses of carrying the Act into effect, and require annual accounts and copies of all regulations to be laid before Parliament.

Legal Rights to Wages.(*e*)

General provisions.

§ 494. The following provisions of the Merchant Shipping Act, 1854,(*f*) lay down general principles:

Right to wages and provisions when to begin.

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Seamen not to be able to give up certain rights.

182. No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages, to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation, by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right, which he may have or obtain in the nature of salvage, shall be wholly inoperative.

Wages not to be dependent on the earning of freight.

183. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice, who would be entitled to demand and recover any wages, if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim.

This section abrogates the Common Law doctrine that it was an implied condition of the seaman's contract that the payment of wages should be dependent on the earning of freight,—a rule expressed by the phrase that "freight is the mother of wages."(*g*)

233. No wages due or accruing to any seaman or apprentice shall

(*c*) See §§ 519, 520 *infra*.
(*d*) See §§ 547–549 *infra*.
(*e*) See § 485, note (*e*) *supra*.
(*f*) 17 & 18 Vict. c. 104.
(*g*) As to the differences between the Courts of Common Law and Admiralty in their interpretation of this rule, see Maude & Pollock, 4th ed. 219.

be subject to attachment or arrestment from any Court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

Sale of and charge upon wages to be invalid.

§ 495. The period within which the master or owner of a ship is to pay the seaman his wages is fixed by the Merchant Shipping Acts, compliance being enforced by penalties. It does not appear to be competent for a seaman by his contract to postpone that period.(*i*) The principal Act provides as follows:

Period within which wages are to be paid.

187. The master or owner of every ship shall pay to every seaman his wages within the respective periods following; (that is to say) in the case of a home-trade ship within two days after the termination of the agreement, or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits (*k*) of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause,(*l*) shall pay to the seaman (*m*) a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.(*n*)

With respect to foreign-going ships, the foregoing section has been modified, and in a large measure superseded by the Merchant Shipping (Payment of Wages and Rating) Act, 1880,(*n*) as follows:

4. In the case of foreign-going ships—

Provision as to foreign-going ships.

(1) The owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, two pounds, or one-fourth of the balance due to him,

(*i*) See 17 & 18 Vic. c. 104, s. 182, *supra*.

(*k*) Such an agreement does not make the seaman a partner, 53 & 54 Vict. c. 39, s. 2 (3) *b*; *Wilkinson* v. *Frasier*, 4 Esp. 182.

(*l*) "A reasonable dispute as to liability" is also "sufficient cause" for refusing to make payment as prescribed by 17 & 18 Vict. c. 104, s. 187. *The Rainbow*, 53 L. T. 91. So is a delay caused by the seaman himself in keeping back the ship's accounts. *The Princess Helena*, Lush. 190; cp. *The Turgot*, 11 P.D. 21. As to what is "a reasonable dispute as to liability," see *re Great Eastern S.S. Co.* 53 L. T. 594; *Delaroque* v. *Oxenholme S.S. Co.*, 1 C. & E. 122.

(*m*) These penalties cannot be enforced in favour of a master, payment of whose wages is delayed beyond the prescribed periods. *The Arina*, 12 P. D. 118, overruling *The Princess Helena*, Lush. 190.

(*n*) 43 & 44 Vict. c. 16. These clauses have no application in cases where the seaman's service terminates before the contemplated period, within 17 & 18 Vict. c. 104, s. 185 (*infra* § 497), *The Woodhorn*, 92 L. T. J. 113.

which is least; and shall pay him the remainder of his wages within two clear days (exclusive of any Sunday, Fast Day in Scotland, or Bank Holiday) after he so leaves the ship.

(4) (*o*) In the event of the seaman's wages or any part thereof not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute (*p*) as to liability, or to any other cause not being the act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof.

When the whole wages are due.

§ 496. It is hardly necessary to state, that a seaman who has faithfully performed his service on board, during the whole period of the agreed voyage, is entitled to receive the whole of the stipulated wages. And if he is rendered unable to render the stipulated service by any hurt received in the performance of his duty, or, as it seems, by natural sickness happening to him in the course of the voyage, and the master retains him on board, he will be entitled to the whole of his wages;(*q*) although it is otherwise if he be left on shore under a proper certificate.(*r*)

Even when by the ship's articles, the seamen were not entitled to their wages until the end of the voyage, yet, if a master, in violation of his contract, discharged a seaman from the ship during the voyage, or before its commencement, if the voyage was in fact undertaken,(*s*) it was the practice of the Admiralty Court to grant him, after deducting any sum earned in another vessel in the meantime, his full wages up to the termination of the voyage,(*t*) together with expenses necessarily incurred in consequence of the wrongful dismissal.(*u*) But this practice must now be limited to cases where the discharge has taken place during the voyage, and after one month's wages had been earned.(*x*)

In the Common Law Courts the proper remedy of the seaman appears to have been either to sue for damages for the breach of the contract, or to treat the contract as rescinded and sue for wages *pro ratâ* to the time of his discharge;(*y*) but the distinction has become unimportant since the Judicature Acts, inasmuch as all the branches of the High Court have now all the jurisdiction (subject to powers of transfer) previously possessed by any of the Courts which it superseded.(*z*)

(*o*) See note (*m*) *supra*.

(*p*) See note (*l*) *supra*.

(*q*) *Chandler* v. *Grieves*, 2 H. Bl. 606, n. (*a*); Maclachlan, 4th ed. 233.

(*r*) 17 & 18 Vict. c. 104, s. 185; *infra* § 497.

(*s*) If the voyage was abandoned before its commencement the remedy for any sum beyond the wages actually earned was by an action for damages at Common Law, *The City of London*, 1 W. Rob. 88.

(*t*) Maclachlan, 4th ed. 233; *The Exeter*, 2 C. Rob. 261; *The Beaver*, 3 C. Rob. 92; *The Elizabeth*, 2 Dods. 403, 411; and see *Wells* v. *Osman*, 2 Ld. Raym. 1044; *The City of London*, 1 W. Rob. 88; *The Camilla*, Swab. 312.

(*u*) *The Frederick*; 1 Hagg. at p. 218. See also *The Great Eastern*, L. R. 1 Ad. 384; *The Blessing*, 3 P. D. 35.

(*x*) As to compensation for wrongful discharge before the commencement of the voyage, or before one month's wages are earned, see 17 & 18 Vict. c. 104, s. 167; *infra* § 498.

(*y*) *Hulle* v. *Heightman*, 2 East, 145. See, however, cases cited in note (*a*).

(*z*) 36 & 37 Vict. c. 66, ss. 16, 24 (7), 36.

It seems that, whatever remedy the seaman pursues he may sue immediately on the wrongful discharge, without waiting for the termination of the voyage.(*a*)

If any temporary detention of the ship happens during the voyage, by reason of superior force—*e.g.*, by embargo, or by capture followed by recapture, the full wages are due, not only for the voyage, but for the time of the detention,(*b*) unless indeed the agreement is for a fixed sum for the whole voyage, in which case the parties must be taken to have contemplated all the accidents that the voyage was liable to, and the stipulated wages will alone be recoverable.(*c*)

When part only of the wages are due. Premature termination of service.

§ 497. By the Merchant Shipping, 1854,(*d*) sec. 185 :

In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship,(*e*) and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned,(*f*) such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid but not for any further period.(*g*)

So, before the statute, where a seaman had, on the capture of the ship, been carried by the enemy into France and was not on board at the time of a subsequent recapture, it was held by Lord Stowell, that all that the seaman could claim were the wages earned prior to the capture.(*h*)

If upon complaint made to a consul at an intermediate port against another person on board the ship, one of the seamen is sent home to England under the authority of an Act of Parliament as a witness on the charge, without any reasonable possibility of being able to rejoin the ship during the voyage, his contract with the owners is thereby dissolved, and his right to wages ceases from the time of his quitting the ship.(*i*)

Where the seaman's agreement is not a contract for a single

(*a*) *Sigard* v. *Roberts*, 3 Esp. 71 ; *Limland* v. *Stephens*, 3 Esp. 269. See the observations on *Hulle* v. *Heightman* (2 East, 145), in 2 Smith's L. C. 9th ed. 21 ; Maclachlan, 4th ed. 235.

(*b*) *Beale* v. *Thompson*, 4 East. 546 ; reversing 3 B. & P. 405 ; *Pratt* v. *Cuff*, cited 4 East, 43 ; *Bergstrom* v. *Mills*, 3 Esp. 36 ; Maclachlan, 4th ed. 234 ; disting. *The Friends*, 4 C. Rob. 143 ; *infra* § 497.

(*c*) Maclachlan, 4th ed. 235.

(*d*) 17 & 18 Vict. c. 104.

(*e*) If a ship is purposely scuttled in order to extinguish a fire, and is afterwards abandoned by the owners, there is a "wreck or loss" within the meaning of this section. In such a case, 43 & 44 Vict. c. 16, s. 4 (1) (4), *supra* § 495 has, no application. *The Woodhorn*, 92 L. T. J. 113.

(*f*) S. 207, *supra* § 489 ; as to the case of seamen whose service is terminated by death, see *infra* §§ 519, 520.

(*g*) The same rule was acted on before the statute in the case of justifiable abandonment, as to which see § 486 *supra*. So, even before the abrogation of the doctrine that "freight is the mother of wages," where a vessel was arrested for illegal trading, to which the seamen were not parties, they were held entitled to wages to the date of the arrest. *The Malta*, 2 Hagg. 158, 164.

(*h*) *The Friends*, 4 C. Rob. 143.

(*i*) *Melville* v. *De Wolf*, 4 El. & Bl. 844 ; § 488 *supra*.

Seaman parted from ship by misconduct not amounting to desertion.

entire voyage, but one under which the wages become vested, and a debt at the end of each of the periods by which they are calculated, he is entitled to the wages for each completed period of service, even although he is afterwards prevented by his own default from completing his full term of service, unless his default amounts to desertion, or such misconduct as renders him liable to forfeiture.(*k*)

In *Button* v. *Thompson*,(*l*) a seaman shipped on board a vessel as mate, at £5 10*s.* per calendar month, under regular articles, for a voyage from Shields to Alexandria, and if required to any ports or ports in the Mediterranean, Black Sea, Danube, &c., and home to the ship's final port of discharge in the United Kingdom or Continent of Europe; the voyage not expected to exceed twelve months. During the voyage, being on shore at Sulina, a port in the Danube, he was left behind, and the ship came home without him. In an action for wages for the period of his actual service on board, the jury found, that he had been guilty of drunkenness and abusive language subversive of discipline, and that he was left behind through his own negligence and misconduct, but that he had not deserted. It was held by a majority of the Court that the seaman was entitled to recover wages up to the time of his being left behind at Sulina; as the contract was for a succession of voyages of indefinite duration and the wages became due and vested at the end of each month of service, subject possibly to forfeiture under circumstances which had not happened,(*k*) though perhaps not recoverable until the expiration of the period of service stipulated for.

And even where the articles provided that the seamen were to lose their share in the proceeds of a whaling voyage if they did not return with the ship to London, and after serving several months they, with the consent of the master, exchanged into another ship, it was held that, assuming they had lost their share under the articles, they could recover compensation for work and labour.(*m*)

§ 498. We have seen that (*n*) formerly, if a seaman was wrongfully discharged after signing the ship's articles and before the voyage began, the Court of Admiralty granted him his full wages for the voyage, in case it was prosecuted, subject to the deduction of wages earned by him in the meantime.(*o*) If, on the other hand, the voyage for which he was engaged was not prosecuted, he was entitled in the Court of Admiralty to his

(*k*) See 17 & 18 Vict. c. 104, s. 243; *infra* § 508.

(*l*) L. R. 4 C. P. 330; and see *Taylor* v. *Laird*, 1 H. & N. 266.

(*m*) *Hillyard* v. *Mount*, 3 C. & P. 93; but see per Williams, J., *Robins* v. *Power*, 27 L. J. C. P. at p. 259; and § 504 *post*, and cases there cited.

(*n*) *Supra* § 496.

(*o*) *The City of London*, 1 W. Rob. 88.

wages for the time that he had served, and he had to resort to his action at common law for any special damage which he had suffered by the breach of the contract.(p)

When part only of the wages contracted for are due.

But now by the Merchant Shipping Act, 1854:(q)

167. Any seaman, who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

Seamen discharged before voyage, to have compensation.

§ 499. If the owners or master change their mind before the ship leaves port, and vary the voyage as described in the agreement, the seamen cannot compel them to proceed with it. But they can in such case require to be paid for the time they have served in port, if they do not choose to accompany the ship to her new destination.(r)

Wages to date of termination of service. On change of voyage.

So, if after the articles are signed, the master violates, or is about to violate the terms of the agreement, by deviating from the stipulated voyage, and the seamen quit the ship accordingly, they are still entitled in the Court of Admiralty to wages up to the time of actually quitting the ship.(s) And if they remain on board they can recover damages for the breach of the agreement.(t)

In case of deviation,

The right of seamen to their wages earned on board a foreign-going ship, which does not in fact sail on the intended voyage, and to a lien for the amount upon the ship and her proceeds, is not affected by the fact that no agreement has been signed by them. Seamen were engaged for a voyage to New Orleans and back, but were discharged before they had signed articles. Orders were made for winding up the company to which the ship belonged, and for the sale of the ship, and the latter never in fact sailed on the intended voyage. It was held that the seamen had a lien for their wages on the ship and her proceeds, and must be paid in priority to all other claimants.(u) And so a seaman who, after being paid off, remains on board in the service of the owner and by his direction, but without signing fresh articles, is entitled to wages for such service, and to recover them by proceedings *in rem* against the ship.(x)

or abandonment of voyage, though before articles signed.

(p) *Wells* v. *Osman*, 2 Lord Raymond, 1044; *The City of London*, 1 W. Rob. 88.

(q) 17 & 18 Vict. c. 104.

(r) Per Lord Stowell, *The Elizabeth*, 2 Dods. 407.

(s) *The Countess of Harcourt*, 1 Hag. 249, 250; *The Cambridge*, 2 Hagg. 243.

(t) *The Justitia*, 12 P. D. 145.

(u) Re *The Great Eastern S.S. Co.*, 53 L. T. 594.

(x) *R.* v. *Judge of City of London Court* (*The Michigan*), 25 Q. B. D. 339.

On volunteering into navy.

A seaman who leaves his ship in order to enter the Royal Navy is also entitled to the proportionate amount of his wages down to the time of such entry.(*y*)

Deduction from wages.

§ 500. When any loss, the amount of which is substantially a liquidated amount, has been occasioned by the gross neglect or misconduct of the seaman, the Court of Admiralty will allow such loss to be deducted from the claim for wages.(*z*) And in a suit for wages the Court of Admiralty will make fair deductions for money received, and for clothes and other articles furnished on the voyage.(*a*)

Although, as has been seen,(*b*) natural sickness or injury received in the performance of duty, do not affect the seaman's wages so long as he remains on board, it is otherwise where the incapacity arises from his own misconduct, for by the Merchant Shipping Act, 1854:(*c*)

Wages not to accrue during refusal to work, or imprisonment,

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses to work when required, whether before or after the time fixed by the agreement for his beginning work, nor unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

And by the Merchant Shipping Act, 1867:(*d*)

nor during illness caused by seaman's own default.

8. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of such illness incapable of performing his duty.

When seamen may claim extra remuneration:

on promotion.

§ 501. The circumstances under which seamen may claim extra remuneration in addition to the wages stipulated in the agreement, have been considered on several occasions. Where a seaman has been promoted to the position of mate, or where a second or inferior mate has succeeded to a superior office, the seaman promoted is entitled to the higher rate of wages given in the situation to which he is promoted, and no alteration of the ship's articles is necessary to support his title.(*e*)

Stipulation for extra remuneration for agreed services not upheld.

But a seaman is not permitted so long as the agreement continues binding, to enforce any subsequent stipulation for increased wages for performing the duties defined thereby. Any such stipulation

(*y*) 17 & 18 Vict. c. 104, s. 215; *infra*, § 523.

(*z*) *The New Phœnix*, 2 Hagg. 420; *The Thomas Worthington*, 3 W. Rob. at p. 132.

(*a*) *The Repulse*, 4 N. of C. 166, 169. As to deductions from wages on account of parish relief to the seaman's family, see 17 & 18 Vict. c. 104, ss. 192, 193, *infra* § 518; as to deductions for travelling expenses, &c., of seamen left abroad, see s. 210, *supra*, § 489.

(*b*) *Supra*, § 496.

(*c*) 17 & 18 Vict. c. 104.

(*d*) 30 & 31 Vict. c. 124.

(*e*) *The Porcupine*, 1 Hagg. 378; *The Providence*, 1 Hagg. 391; *The Gondolier*, 3 Hagg. 190.

fails for want of consideration.(*f*) Nor can he claim any further wages or gratuity by usage or custom.(*g*)

Where seamen may claim extra remuneration.

It has been repeatedly held that the desertion of some of the crew does not release the seamen who remain by the ship from their agreement, so as to entitle them to insist on increased wages for continuing their services.

In *The Araminta*, half the crew having deserted the ship at a foreign port, the master proposed to the remaining seamen to divide among them, on condition of their working the ship to Bombay, the wages due to the deserters. The proposal was accepted. The forfeited wages were divided, and the ship was taken in safety by the remaining crew to Bombay. On the ship's return home, the owners claimed to deduct the amount of the forfeited wages in settling with the crew, and it was held that the contract for reward beyond the wages stipulated in the seamen's contract was illegal; that such a payment made by the master might be recovered at law by the owner; and that the Court of Admiralty would give it the owners by allowing the deductions.(*h*)

When released by circumstances from their agreement.

The principle of these decisions is that the crew are bound to perform their usual duties and are not entitled to an increase of wages merely on account of an increase of labour,(*i*) or of peril,(*k*) unless the circumstances are such as to release them from their articles. Such circumstances occurred in the case of *Hartley* v. *Ponsonby*.(*l*) There the crew of a ship became so diminished in numbers at a foreign port, as to make it, in the opinion of the jury, dangerous to life for the remaining seamen to proceed on the stipulated voyage, and the master was unable to procure additional hands. And it was held that, inasmuch as the remaining seamen were not, under the circumstances, bound under their articles to proceed on the voyage, an agreement by the master to pay them increased wages, in consideration of their continuing to navigate the ship, was binding.

For services beyond the scope of the agreement.

So where a seaman performs some service beyond the scope of his original contract, upon a promise by the master to recompense him, such promise is binding upon the master and owners; as where the master of a captured ship promised to pay monthly wages to a seaman to induce him to become a hostage.(*m*)

§ 502. If there is a change of owners during the voyage, the

(*f*) *Stilk* v. *Myrick*, 2 Camp. 317; *Frazer* v. *Hatton*, 2 C. B. N. S. 512.

(*g*) *Elsworth* v. *Woolmore*, 5 Esp. 84.

(*h*) *The Araminta*, 1 Spinks, Eccl. & Adm. 224; see also *Harris* v. *Carter*, 3 E. & B. 559; *The Prince Edward*, 2 L. T. N. S. 139.

(*i*) Per Lord Campbell, *Harris* v. *Carter*, 3 E. & B. at p. 562.

(*k*) *The Christiana*, 5 (Irish) Jur. N. S. 63; 2 Pritch. Ad. Dig. 3rd ed. 2293.

(*l*) 7 El. & Bl. 872; cp. *The Christiana* (*ubi sup.*), where the ship had become unseaworthy; per Dr. Lushington, *The Araminta*, 1 Sp. E. & A. 229.

(*m*) *Yates* v. *Hall*, 1 T. R. 73; cp. *Clutterbuck* v. *Coffin*, 3 M. & Gr. 842.

Effect of a change of owners upon wages.

seaman's service on board under the original articles ceases, and he may lawfully leave the ship, if he wishes to do so, upon hearing of the change. And if he then signs new articles, they govern his right to wages for the residue of the voyage.

If the seaman does not leave the ship immediately upon hearing of the change, but continues to serve on board without entering into any new engagement, such conduct is evidence from which a jury may infer a contract by the new owner to pay the seaman *pro ratâ* for his services down to the time when he actually leaves the vessel.

On the other hand, if he sustain damage by the change of owners, the original owner is not discharged from his obligations to the seaman under the original articles; and since he has put it out of his power to perform his contract, they may maintain actions against him for the breach of it.(*n*)

Seaman may not insure wages.

§ 503. It is convenient here to mention that no inferior officer or seaman is allowed by the policy of our law to insure his wages;(*o*) or perquisites in the nature of wages;(*p*) in order that he may be stimulated to all possible personal exertion for the preservation of the ship. This rule does not, as we have seen, apply to the master.(*q*)

When no part of the agreed wages become due.

Condition not performed,

§ 504. Although, as we have seen, no agreement by a seaman to forfeit his lien on the ship, or to give up any remedy for the recovery of his wages, or to abandon his right to them in case of loss of the ship can be enforced;(*r*) yet, if he enter into a contract to serve on a particular voyage, the payment of his wages, whether per month or by a lump sum, being made conditional on his serving throughout the voyage, then if he voluntarily quits the vessel, though with no intention of deserting, or is removed by death, before the end of the voyage, there is no right to wages for the period of service actually rendered.(*s*)

for illegal services.

No wages can be recovered under an illegal contract;(*t*) or where the ship has been condemned for illegal trading to which the seaman have been parties.(*u*)

(*n*) *Robins* v. *Power*, 4 C. B. N. S. 778.

(*o*) Per Lord Stowell, *The Juliana*, 2 Dods. 509; *The Neptune*, 1 Hagg. at p. 239; per Sir J. Nicholl, *The Lady Durham*, 3 Hagg. at p. 201.

(*p*) *Webster* v. *De Tastet*, 7 T. R. 157; 1 Park on Ins. 11.

(*q*) *Supra*, § 60.

(*r*) 17 & 18 Vict. c. 104, s. 182; *supra*, § 494.

(*s*) *Cutter* v. *Powell*, 6 T. R. 320; 2 S. L. C. 1; Maclachlan, 4th ed. 244; cp. *Sherman* v. *Bennett*, 1 M. & M. 489; and disting. *Button* v. *Thompson*, L. R. 4 C. P. 330; *Robins* v. *Power*, 4 C. B. N. S. 778; *Hillyard* v. *Mount*, 3 C. & P. 93. But it would seem that such a contract would not deprive him of the benefit of 17 & 18 Vict. c. 104, s. 185 (*supra*, § 497), if his services were terminated as there described. See § 182 of that Act, *supra*, § 494.

(*t*) *The Vanguard*, 6 C. Rob. 207; *The Benjamin Franklin*, *ibid.* 350; *The Leander*, Edw. 35, 38.

(*u*) *The Malta*, 2 Hagg. at p. 163; see § 497, note (*g*) *supra*.

Forfeiture of Wages.

§ 505. Not only is a seaman debarred from earning wages during any period of unlawful refusal to work, or of illness caused by his own fault;(*x*) he is also liable in case of desertion, and in some cases of misconduct, to forfeit in whole or in part wages already earned.

For misconduct before the Merchant Shipping Acts.

Prior to the Merchant Shipping Acts desertion before the completion of the voyage involved an entire forfeiture of wages;(*y*) and aggravated misconduct was also punishable by forfeiture of all wages; for example, habitual drunkenness, and consequent non-performance of duty;(*z*) conduct tending to the encouragement of mutinous acts;(*a*) disobedience to lawful orders; habitual inattention to ordinary duties exposing the ship to danger;(*b*) or any act of disobedience or misconduct which renders the discharge of the seamen imperatively necessary for the safety of the ship and the due preservation of discipline.(*c*) Nor was there any power to modify the penalty.(*d*)

What conduct causes forfeiture of wages.

In judging of a seaman's offences, the Court always drew a strong line of distinction between disobedience to orders in port and any insubordination whatever, when the ship was on the high seas;(*e*) and it will take into account the conduct of the master, and the degree of discipline maintained on board, when these are such as to be a palliation of the offences imputed to the seaman. But, on the other hand, it must be borne in mind, that, disobedience to orders being an offence of the grossest kind, it is not a peremptory or harsh tone, or an overcharged manner in the exercise of authority, that will justify resistance.(*f*)

Misconduct in port more leniently considered.

In *The Test*,(*g*) disobedience of orders and refusal to work by a seaman, during seven days, while the ship was in a foreign port and in charge of the chief mate, who was so quarrelsome that he was there discharged with others of the crew, the seaman being admitted to be quiet and inoffensive, and to have conducted himself properly before and afterwards, during a long voyage, was held not to evoke a forfeiture of wages.

So where a seaman's claim for wages was resisted on the ground

(*x*) 17 & 18 Vict. c. 104, s. 186; 30 & 31 Vict. c. 124, s. 7; *supra*, § 500.

(*y*) *The Baltic Merchant*, Edw. 86; *The Pearl*, 5 C. Rob. 224; *The Westmorland*, 1 W. Rob. 216.

(*z*) Abbott, Sh. 13th ed. 805; per Dr. Lushington, *The Atlantic*, Lush. 566, 567. Occasional intoxication does not work a forfeiture, *S. C.*; *The New Phœnix*, 1 Hagg, 198; *The Lady Campbell*, 2 Hagg. 5.

(*a*) *The Lima*, 3 Hagg. 346; *The Susan*, 2 Hagg. 229, n.; cp. *The Marina*, 50 L. J. Ad. 33.

(*b*) *The Exeter*, 2 C. Rob. 263; *The Duchess of Kent*, 1 W. Rob. at p. 285.

(*c*) *The Exeter*, 2 C. Rob. at p. 265; *The Blake*, 1 W. Rob. 73, 75; and see § 485, *supra*.

(*d*) *The Blake*, 1 W. Rob. at p. 87; and see *The Pearl*, 5 C. Rob. at p. 230.

(*e*) *The Blake*, 1 W. Rob. at p. 88.

(*f*) Per Lord Stowell, *The Exeter*, 2 C. Rob. at p. 264.

(*g*) 3 Hagg. 307, 315.

of refusal to do his duty, which by the special terms of his ship's articles was to cause a forfeiture of wages, it was held to be a good answer that the refusal to work was caused by the misconduct of the master, which went to induce the men to incur such forfeiture.(*h*)

Burthen of proof as to desertion.

§ 506. The burthen of proving that the seaman's absence from the ship amounted to desertion was always upon the owner who set it up in answer to a claim for wages.(*i*) The mode of satisfying this burthen is now defined by the Merchant Shipping Act, 1854.(*k*) Prior to that date there were numerous decisions as to what constituted desertion; these are of less importance now than formerly, but many of them are still useful as putting a meaning on the words "before the completion of the voyage" and illustrating what is "sufficient reason for leaving the ship."

"Desertion" before the Merchant Shipping Act, 1854.

The offence of desertion consisted in the abandonment of duty by quitting the ship before the termination of the engagement, without justification, and with the intention of not returning.(*l*) Absence with leave, or even an absence in obedience to an order, might become desertion, if the seaman, when required by the master to do so, refused to return to the ship.(*m*) But absence without leave, or even in defiance of prohibition, whatever its duration, if the seaman intended to return, and actually returned or offered to return to the ship,(*n*) or was prevented from doing so by the act of the master in causing him (for example) to be imprisoned.(*o*) The fact that a seaman is left behind through his own negligence does not involve the consequence of desertion.(*p*)

When the seaman's engagement is completed.

In the ordinary case of seamen engaged for a voyage, the agreement is binding until the discharge of the cargo. Therefore, if the ship has arrived in the mouth of a river but cannot enter the port or dock there to which she is bound, because it is too full to admit her, it is desertion if a seaman finally leave her, without permission, and without waiting a reasonable time for the removal of the difficulty.(*q*) But where the ship's articles contained a clause that the seamen might leave at the end of three months, if the ship was in port or in perfect safety, of which the master was to be the sole judge, and the ship being in port

(*h*) *Train* v. *Bennett*, 3 C. & P. 3.

(*i*) *The Two Sisters*, 2 W. Rob. 125, 138.

(*k*) 17 & 18 Vict. c. 104, s. 250, *infra*.

(*l*) *The Westmorland*, 1 W. Rob. 216, 222; *The Two Sisters*, *ubi sup.*; and see *The Pearl*, 5 C. Rob. at p. 228.

(*m*) *The Bulmer*, 1 Hagg. 163; *The Jupiter*, 2 Hagg. 221.

(*n*) *Sigard* v. *Roberts*, 3 Esp. 71; *The Two Sisters*, 2 W. Rob. 125; *The Agincourt*, 1 Hagg. 271, 281.

(*o*) *The Westmorland*, 1 W. Rob. 216, 225; *The Ealing Grove*, 2 Hagg. 15.

(*p*) *Button* v. *Thompson*, L. R. 4 C. P. 330.

(*q*) *The Baltic Merchant*, Edw. 86, 91; *The Pearl*, 5 C. Rob. 224, 230; *The Cambridge*, 2 Hagg. 243, 246. See, however, 17 & 18 Vict. c. 104, s. 243 (3), *infra*, § 508.

in safety after three months, the seamen left without the permission of the master, it was held that this was not desertion.(r)

Acts not amounting to desertion.

The following circumstances have been held to justify the seaman in quitting his ship without leave:—The abandonment of the ship by the master *sine spe recuperandi*;(s) the violation, or intended violation, of the terms of the seamen's contract, by voluntarily deviating from the stipulated voyage;(t) unseaworthiness,(u) or short-handedness,(x) involving danger to life; failure of the master to supply provisions;(y) unnecessary and unreasonable severity and cruelty on the part of the master, or conduct on his part imperilling the personal safety of the seaman;(z) or any illegal act on his part, rendering it necessary for the seaman to quit the ship, for desertion must be voluntary;(a) illness of the seaman.(b) We have seen that leaving the ship for the purpose of forthwith entering the navy is not desertion; although a wrongful abandonment of the ship, without any declaration of such an intention, is not purged by entry within twenty-four hours into the navy.(c)

What amounts to a waiver of the forfeiture.

§ 507. An entire forfeiture of wages may be waived if the master receive the seaman back, and allow him to return to his duty.(d) In *Millar* v. *Brandt*,(e) it was provided by a ship's articles, that any of the crew, who should absent themselves from the ship without leave should forfeit their wages. After one of the crew had so absented himself, the master received him back again and allowed him to work like the others, and it was held that the forfeiture was waived, and the wages were recoverable.

But if seamen have incurred a forfeiture, and in time of distress the master call on those seamen to assist, this is no waiver, unless the master continue to employ them after the peril is over;

(r) *Neave* v. *Pratt*, 2 B. & P. N. R. 408.

(s) *The Warrior*, Lush. 476; *supra*, § 486.

(t) *The Eliza*, 1 Hagg. 182; *The Cambridge*, 2 Hagg. 243; and see cases cited *supra*, § 479. It is otherwise where the deviation is necessitated by Government orders, or stress of weather; 2 Hagg. at p. 247.

(u) *Davidson* v. *Todhunter*, cited in *Hartley* v. *Ponsonby*, 7 E. & B. 876; *supra*, § 501.

(x) *The Araminta*, 1 Spks. E. & A. 224, 229; *Hartley* v. *Ponsonby*, *ubi sup.* For the statutory provisions for protecting seamen against unseaworthiness, see §§ 528, 529, *infra*.

(y) *The Castilia*, 1 Hagg. 59. See the statutory provisions, § 524, *infra*.

(z) *Edward* v. *Trevellick*, 4 E. & B. 59; *Limland* v. *Stephens*, 3 Esp. 269. As to the seamen's right to go ashore, for the purpose of making a complaint, see 17 & 18 Vict. c. 104, s. 232, *infra*, § 531.

(a) Per Lord Kenyon, C.J., 3 Esp. at p. 269.

(b) *The Test*, 3 Hagg. 307, 315.

(c) *Supra*, § 499; 17 & 18 Vict. c. 104, s. 214; *The Amphitrite*, 2 Hagg. 403; *infra*, § 523, and note.

(d) *Beale* v. *Thompson*, 4 East 546, 564. Such conduct would not necessarily amount to a waiver of a partial forfeiture, under 17 & 18 Vict. c. 104, s. 243 (2). In the United States, the master may remit a forfeiture, and his pardon restores to the seaman his right to wages, *The Ship Mentor*, 4 Mason, 84; *Whitton* v. *The Brig Commerce*, 1 Pet. Ad. 160; and if after desertion a seaman offers to return to duty in a reasonable time and repents of the offence, the master is bound to receive him back, unless his previous misconduct justifies his discharge. *Cloutman* v. *Tunison*, 1 Sumner, 373; 3 Kent Comm. 198, 199.

(e) 2 Camp. 590; see also *The Test*, 3 Hagg. 307, 315.

although, if after that time the master continue them in the service of the ship, the forfeiture is waived.(*f*)

Statutory Provisions as to Forfeiture of Wages.

§ 508. The foregoing rules are of less consequence since the passing of the Merchant Shipping Act, 1854, which laid down a code of definite rules on the subject of forfeitures, and gave to the Court a wide discretion in dealing with them. Prior to that Act forfeiture of wages was imposed in some cases by certain isolated statutes, some of which are still unrepealed.

Forfeiture for refusal to defend ship.

By 22 & 23 Car. II. c. 11, sec. 6, forfeiture of wages and six months' imprisonment is imposed on seamen who refuse to fight or defend the ship when commanded to do so by the master; and by a subsequent Act it is provided,(*g*) that in case any master, officer, or seaman of any merchant ship, which carries guns and arms, shall not, when attacked by any pirate, fight and endeavour to defend themselves and their ship, or shall utter any words to discourage others from defending the ship, whereby the ship is captured, he "shall lose and forfeit all and every part of the wages due to him and them respectively, to the owner and owners of the said ship or vessel, and shall not be permitted to sue for or recover the same or any part thereof . . . . and as a further punishment shall suffer six months' imprisonment."

By the Merchant Shipping Acts,(*h*) a seaman is not, as we have seen, entitled to wages during any period of refusal to work, or of inability caused by his own default. This is not, however, strictly forfeiture, which is dealt with by the following sections of the principal Act:(*i*)

183. . . . . In all cases of wreck or loss of the ship, proof that any seaman or apprentice has not exerted himself to the utmost to save the ship, cargo, and stores, shall bar his claim for wages.

Offences of seamen and apprentices and their punishments. Desertion.

243.(*k*) Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offences he shall be liable to be punished summarily as follows: (that is to say)

(1) For desertion(*l*) he shall be liable(*m*) to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the

(*f*) *Train* v. *Bennett*, 3 Car. & P. 3.

(*g*) 8 Geo. I. c. 24, s. 6.

(*h*) 17 & 18 Vict. c. 104, s. 186; 30 & 31 Vict. c. 124, s. 7.

(*i*) As to the application of this part of the Act see §§ 3, 485, *supra*, and notes. As to forfeiture for frivolous complaint provisions, see s. 222; *infra*, § 524.

(*k*) This section does not affect any remedy which the owner may have, by summary proceedings or otherwise, for breach of contract, but he may not be compensated more than once for the same damage; 46 & 47 Vict. c. 41, s. 54 (overruling *Gt. Northern, &c., Co.* v. *Edgehill*, 11 Q. B. D. 225).

(*l*) As to what is proof of desertion, see s. 250, *infra*.

(*m*) The parts of this section which authorised imprisonment for desertion and kindred offences were repealed by 43 & 44 Vict. c. 16, s. 12. For substituted provisions empowering the master to convey the deserter on board, see s. 10 of that Act, *infra*, § 544.

wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him:

Neglecting or refusing to join, or to proceed to sea, absence within 24 hours before sailing, and absence without leave:

(2) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable (*n*) to forfeit out of his wages a sum not exceeding the amount of two days pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute:

Quitting without leave before ship is secured:

(3) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay: (*o*)

Act of disobedience:

(4) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay:

Continued disobedience:

(5) For continued wilful disobedience to lawful commands or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute:

Assault on officers:

(6) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour:

Combining to disobey:

(7) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Wilful damage and embezzlement:

(8) For wilfully damaging the ship, or embezzling, or wilfully damaging, any of her stores or cargo, he, shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

Act of smuggling causing loss to owner.

(9) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy.

Facilities for proving desertion, so far as concerns forfeiture of wages.

Sect. 244 requires an entry of offences enumerated in the preceding section to be made in the official log, and to be read

(*n*) Note (*m*) *supra*.
(*o*) *McDonald* v. *Jopling*, 4 M. & W. 285; *Frontine* v. *Frost*, 3 B. & P. 302.

over to the offender, whose answer, if any, is also to be entered. Sect. 249 deals with the production of the entry in case of desertion abroad to persons specified in s. 207, and with the certificate of desertion to be obtained from them; and makes certified copies of the entry and certificate receivable in evidence. These sections have been set out above.(*p*) Sects. 245 and 247 will be found below.(*q*) The latter authorises the deduction of costs from the wages of deserters sent on board under its provisions. Sects. 246 and 248 have been repealed. The Act continues:

Facilities for proving desertion, so far as concerns forfeiture of wages.

250. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the Court that he had sufficient reason for leaving his ship.

Costs of procuring imprisonment may to the extent of £3 be deducted from wages.

251. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has, in the course of the voyage, been convicted of any offence by any competent tribunal and rightfully punished therefor by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

Amount of forfeiture how to be ascertained when seamen contract for the voyage.

252. Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Application of forfeitures.

253. All clothes, effects, wages and emoluments which under the provisions hereinbefore contained are forfeited for desertion shall be applied in the first instance in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place; and may, if earned subsequently to the desertion, be recovered by such master, or by the owner or his agent, in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages the court may order the same to be paid

(*p*) *Supra*, §§ 124, 489 and note (*g*). (*q*) *Infra*, §§ 543, 544.

accordingly; and subject to such reimbursement the same shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdon; and in all other cases of forfeiture of wages under the provisions hereinbefore contained the forfeiture shall in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

Questions of forfeitures may be decided in suits for wages.

254. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Mode of Recovering Wages and Seaman's Lien.

Seamen may proceed against owners, or master, or ship and freight.

§ 509. In the Common Law courts, seamen might always proceed for their wages against the owners, who were liable upon the engagement entered into by the master as their agent;(*r*) or against the master who actually contracted with them.(*s*) Indeed it seems that the master may be liable for wages earned under a contract made with the seamen by the owner himself, for it has been said that it requires very strong proof to sustain a defence by the master that the crew gave exclusive credit to the owner for their wages, and that the mere fact that the owner shipped the crew in the home port, will not raise a presumption to this effect; for that the shipping articles generally contemplate the contract to be made by and with the master, and the maritime law treats the master, from his direct relation to the crew, as incurring a personal responsibility to them for their wages.(*t*)

In the Admiralty Courts, except in the rare case when the wages were due under a "special contract,"(*u*) the owner, the master, and the ship and freight were severally liable for them, and the seaman was entitled to select against which he would proceed.(*x*) So that the seaman had a treble remedy. And this he still possesses, but no longer subject to the above exception; for the Admiralty Court Act, 1861, conferred(*y*) upon the Admiralty Court "jurisdiction over any claim by a seaman of any ship (*z*) for wages earned by him on board the ship, whether

(*r*) § 401.

(*s*) See, for example, *Edward* v. *Trevellick*, 4 E. & B. 59.

(*t*) Story on Agency, 299.

(*u*) *The Riby Grove*, 2 W. Rob. 52. The Admiralty Court had jurisdiction though the seamen's contract was made on land. *The Prince George*, 3 Hagg. 376, 379.

(*x*) Per Lord Stowell, *The Jack Park* (master), 4 C. Rob. at p. 311; *The Stephen Wright* (owners), 12 Jur. 732; *The Prince George* (ship), 3 Hagg. 376.

(*y*) 24 Vict. c. 10, s. 10; as to the jurisdiction of inferior courts, see *infra*, § 516.

(*z*) "Ship" includes "any vessel used in navigation, not propelled by oars;" *ibid.*, s. 2.

. . . . due under a special contract, or otherwise;" and provided (*a*) that this jurisdiction might "be exercised either by proceedings *in rem*, or by proceedings *in personam*."

By suing in the Admiralty Court, the seamen obtained not only the security of the ship and freight, but also the advantage of being able all to join in one suit;(*b*) but this distinction has disappeared since the Jurisdiction Act,(*c*) though the machinery of the Admiralty Division is that which is adapted to proceedings against the ship.

Seamen's maritime lien for wages.

§ 510. The principal advantage to the seaman of proceeding *in rem* is that it enables him to enforce the security which the law gives him, his maritime lien on ship and freight.(*d*)

To what lien extends.

It follows the ship.

The maritime lien has been sufficiently defined above.(*e*) It involves a right to arrest the ship and freight, and to be paid, if necessary, out of their proceeds. It extends to the whole of the ship, her sails and tackle, while she remains entire, and, in case of wreck, to every plank or part of her which survives.(*f*) It continues to attach to her in the hands of a *bonâ fide* purchaser without notice, so that he takes the ship subject to this right of the seamen.(*g*). It takes priority of the claim of a mortgagee.(*h*) And it has been held that when an insured ship was lost, and the insurance money was paid to the assignees of her owner who had become bankrupt, the seamen retained their priority, and should be paid in full out of that fund.(*i*)

We have seen that any agreement by a seaman to forfeit his lien is void.(*k*)

Ranking of seamen's lien.

The lien of the seamen has precedence of bottomry bonds, if the wages became due on or subsequent to the voyage on which the bond was given;(*l*) and of the master's lien for his wages and disbursements.(*m*)

On the other hand, it yields priority to a bottomry bond given on a voyage subsequent to that on which the wages were earned;(*n*) to the lien of salvors by whose exertions the seaman's security has been preserved;(*o*) and to that which attaches to the ship

(*a*) 24 Vict. c. 10, s. 35.
(*b*) *Ross* v. *Walker*, 2 Wils. 264.
(*c*) 36 & 37 Vict. c. 66.
(*d*) *The Lady Durham*, 3 Hagg. 196, 201; *The Mary Ann*, 9 Jur. 94.
(*e*) *Supra* § 74. As to the consequences of malicious arrest see *The Walter D. Wallet*, (1893) P. 202; *The Collingrove*, 10 P. D. 158.
(*f*) *The Neptune*, 1 Hagg. at p. 238; *The Reliance*, 2 W. Rob. 119.
(*g*) *The Sydney Cove*, 2 Dods. 13; *The Batavia*, 2 Dods. 500; *The Nymph*, Swab. 86; *The Bengal*, Swab. 468; and see *The Bold Buccleugh*, 7 Moo. P. C. at p. 284.
(*h*) *The Chieftain*, Br. & L. 212.
(*i*) *Re Dawson*, Fonb. 229.
(*k*) 17 & 18 Vict. c. 104, s. 182; *supra*, § 494.
(*l*) *The Madonna d'Idra*, 1 Dods. 37; *The Sydney Cove*, 2 Dods. 13; *The William F. Safford*, Lush. 69; *The Union*, Lush. 128; *The Hope*, 28 L. T. N. S. 287.
(*m*) *The Salacia*, Lush. 545; see §§ 74 *et seq. supra*.
(*n*) *The Hope*, *ubi sup.*; see § 461, *supra*.
(*o*) *The Gustaf*, Lush. 506; see § 747, *infra*.

Ranking of seamen's lien.

for damage done by collision,(p) except, perhaps, in the case of a British ship, with respect to wages earned after the date of the collision.(q) In the case of a foreign ship, the seaman's lien for wages earned after the collision, but not on a subsequent voyage, is postponed to the damage lien, on the principle that there is less hardship in leaving the foreign seaman to seek his remedy *in personam* in a foreign court than there would be in leaving the sufferer from collision to the like course ;(r) but the result might be modified if the foreign owner were shown to be bankrupt.(s) Subject to the foregoing remarks, the general rule, "the later in time, the earlier in payment," obtains, and the seaman's lien takes precedence of every maritime lien which attached before his.(t) It is also preferred to a solicitor's charge (under 23 & 24 Vict. c. 127, s. 28) on the proceeds remaining in court after payment of the award in a salvage suit which the solicitor was retained to defend ;(u) and to a claim in respect of necessary advances for towage and light dues,(x) although the vessel would have been liable to distress and sale for the latter.(y)

Where the ship on her arrival in port is placed in the hands of a shipwright, who repairs her, and retains possession of her in the exercise of his common law or possessory lien, somewhat different considerations apply. In such a case, the master and seamen take precedence of the shipwright for wages earned before the ship was put into his hands. But the lien of the shipwright takes precedence of all claims which were not perfected when the ship came to his yard, including the seamen's claim for wages while she was there.(z)

Seamen's lien on the freight

§ 511. Inasmuch as the right to freight follows the right to the ship, seamen have a maritime lien on the freight as well as the ship, and are entitled to arrest it, and have it paid into Court to answer any deficiency in the fund arising from the sale of the ship.(a) And an absolute assignment of freight is subject to deduction for seamen's wages, and does not defeat their lien.(b)

(p) *The Benares*, 7 N. of C. Supp. p. l.

(q) Maclachlan, 4th ed. 742.

(r) *The Linda Flor*, Sw. 309 ; *The Elin*, 8 P. D. 39, 129.

(s) See per Dr. Lushington, Sw. at p. 311.

(t) See § 80, *supra*. Maclachlan, 4th ed. 740.

(u) *The Livietta*, 8 P. D. 209, 214.

(x) *The Andalina*, 12 P. D. 1. Neither necessaries nor towage services confer a lien. *The Heinrich Bjorn*, 10 P. D. 44, 11 Ap. Ca. 270 ; *Westrup* v. *Gt. Yarmouth, &c., Co.*, 43 Ch. D. 241. Nor is a material man who has advanced money for payment of wages entitled to priority which the seamen would have had, unless at all events he has made the payment with the leave of the Court. *The Lyons*, 57 L. T. 818 ; *The Titia*, 64 L. T. 148 ; cp. *The Bridgwater*, 37 L. T. 366.

(y) 17 & 18 Vict. c. 104, s. 401 ; *supra*, § 226.

(z) *The Gustaf*, Lush. 506 ; *The Immacolata Concezione*, 9 P. D. 37.

(a) *The Mary Ann*, 9 Jur. 94 ; *The Lady Durham*, 3 Hagg. 196. In the United States, the lien of seamen for their wages attaches to the ship and the freight, and all the proceeds of both or either and follows them into whose hands soever they may go : 2 Parsons, Sh. 60.

(b) *Lindsay* v. *Gibbs*, 4 Jur. N. S. 779 ; *The Arab*, 5 Jur. N. S. 417.

If the ship only be in the first instance arrested by the seamen for their wages, and, it appearing that there are bottomry claims thereon, the seamen afterwards apply to have the freight arrested, the Court will be bound to grant such a motion.(*c*) But, as we have seen,(*d*) there can be no maritime lien on freight where there is none on ship in respect of the same debt.

No lien on cargo, but cargo may be attached for freight.

A seaman has no lien for wages on the cargo as such. So far, however, as the cargo is subject to freight, the seamen may attach it as security for the freight that may be due.(*e*) And it has been suggested that in cases where the owner of the ship is also the owner of the cargo, and the ship has been lost, and the cargo saved, the cargo may be arrested by the seamen in a suit for wages, for the reason that, although, technically speaking, no freight can be payable from a man to himself, yet the cargo includes in itself the value of the freight.(*f*)

The seaman's lien on freight, and his right to arrest the cargo for the purpose of enforcing that lien, are not affected by the fact that the freight is due, under a sub-charter, to the charterers, and not to the owners of the ship.(*g*)

Viaticum and subsistence money.

§ 512. The Admiralty Court early recognised the principle that a seaman who rightly quits his ship has a claim upon the owners to be restored to his home, and to be furnished with provisions until his arrival;(*h*) and we have seen that now the means of subsistence and a passage home are by statute required to be furnished by the master who discharges any seaman of a British ship abroad without fault on his part.(*i*) In the case of foreign seamen discharged in this country, the Court will award them, in addition to their wages, subsistence money for the time between the date when they left the ship and the date when they returned to their country, or might reasonably have done so,(*k*) together with their *viaticum*, or passage-money home,(*l*) unless they obtain employment as seamen in another vessel.(*m*) These claims are enforceable as, and take priority against the *res* with, claims for wages.(*n*)

Seaman does not lose lien though ship already arrested by other claimants.

§ 513. If the ship is already under arrest at the suit of other creditors, the seamen still have a right to enter their claim and enforce their lien for wages, and even if the fund in court is insufficient to satisfy the claims of bondholders, who have no recourse

(*c*) *The Mary Ann*, 9 Jur. 94.
(*d*) *Supra*, § 78; *Morgan* v. *The Castlegate S.S. Co.* (1893), A. C. 38.
(*e*) *The Lady Durham*, 3 Hagg. 196, 200; *The Andalina*, 12 P. D. 1.
(*f*) Per Dr. Lushington, *The Riby Grove*, 2 W. Rob. 59, 60.
(*g*) *The Andalina*, *ubi sup.*
(*h*) *The Eliza*, 1 Hagg. at p. 186.
(*i*) 17 & 18 Vict. c. 104, s. 205; *supra*, § 489.
(*k*) *The Immacolata Concezione*, 50 L. T. 539, 541.
(*l*) *The Immacolata Concezione*, *ubi sup.*; 9 P. D. 37; *The San José Primeiro*, 3 L. T. 513.
(*m*) *The Raffaelluccia*, 37 L. T. 365.
(*n*) *The Immacolata Concezione*, *ubi sup.*; *The Livietta*, 8 P. D. 209, 214.

against the owners in person, the court has no authority to restrain seamen, who have such recourse, from proceeding against the ship, and drive them to a personal action against the owners or master.(*o*) We have seen that in the Chancery Division, where the ship is the property of a limited company which is being wound up, the seamen may claim in the winding-up, and will obtain the same priority against the ship and the proceeds of her sale as they would have had in a suit *in rem* in Admiralty.(*p*)

Nor by first proceeding *in personam*.

A seaman is not debarred from enforcing his lien against the ship, even in the hands of a subsequent purchaser, by having in the first instance sued and obtained judgment against his employer in a personal action, provided he has not been able to enforce payment.(*q*) But it has been said, that if an action was still pending at Common Law, the Court of Admiralty would not allow a suit to be promoted before itself to a precisely similar effect.(*r*) At the present day the plaintiff would probably, under such circumstances, have to submit to the transfer of his Common Law action, and its consolidation with his action *in rem*, and might have to pay any costs thrown away by his double proceedings.(*s*)

Nor by personal release of owner.

Lien may be lost by *lâches*.

Similarly, a release by a seaman of his personal claim against the owner does not operate as a release of the ship from his lien.(*t*) But as we have seen in treating of the master, the lien may be lost by *lâches* in enforcing it, or by the voluntary waiver of immediate payment.(*u*)

Who are entitled to seamen's lien.

§ 514. Every person employed on board a ship as an instrument of navigation or of transport,(*x*) is entitled to the advantages of the seamen's lien; for example, a mate;(*y*) a purser;(*z*) a ship's carpenter;(*a*) butcher, baker, and steward;(*b*) a female cook and steward;(*c*) or an apprentice.(*d*) And this doctrine extends even to a ship's surgeon.(*e*) A pilot is also regarded as a seaman with the right to sue as such for his wages; but this

(*o*) *The Arab*, 5 Jur. N. S. 417; Maclachlan, 4th ed. 254. A different principle, as we have seen, is followed in damage cases; *The Linda Flor*, Sw. 309; *supra*, § 510.

(*p*) *Re The Great Eastern S.S. Co.*, 53 L. T. 594; *supra*, § 499.

(*q*) *The Bengal*, Sw. 468; and see *The John and Mary*, Sw. 471; *The Orient*, L. R. 3 P. C. 696; *The Sylph*, L. R. 2 Ad. 24 (overruled as to the principal point decided, by *The Vera Cruz*, 10 Ap. Ca. 59).

(*r*) Per Dr. Lushington, Sw. at p. 473.

(*s*) See 36 & 37 Vict. c. 66, s. 36; O. 49, rr. 3, 8.

(*t*) *The Chieftain*, B. & L. 212.

(*u*) *The William Money*, 2 Hagg. 136, and cases cited *supra*, § 77.

(*x*) See per Wills, J., *R.* v. *Judge of City of London Court* (*The Michigan*), 25 Q. B. D. 339, 343. As to the master, see 17 & 18 Vict. c. 104, s. 191; and § 69 *et seq.*, *supra*.

(*y*) *R.* v. *Judge of City of London Court*, *ubi sup.*; *Hook* v. *Moreton*, 1 Lord Raym., 397.

(*z*) *The Prince George*, 3 Hagg. 376.

(*a*) *Wheeler* v. *Thompson*, Str. 707.

(*b*) *Re Great Eastern S.S. Co.*, 53 L. T. 594.

(*c*) *The Jane and Matilda*, 1 Hagg. 187.

(*d*) *The Albert Crosby*, Lush. 44; but the Court of Admiralty would not decree the penalty for breach of the apprenticeship deed: S.C.

(*e*) *Mills* v. *Long*, 1 Sayer, 136; *Ross* v. *Walker*, 2 Wils. 264. But he could

right did not, prior to the Admiralty Court Act, 1861, extend to wages earned within the body of a county.(*f*) The seaman's lien cannot be claimed by stevedores employed in loading or discharging the ship.(*g*)

Period of limitation on suits for wages. Proviso for plaintiffs in respect of infancy, &c., in such suits.

§ 515. All actions for seamen's wages must be commenced within six years after the accrual of the cause of action,(*h*) except in the case of plaintiffs who are at the time of the accrual of the cause of action within the age of twenty-one years, *feme covert*,(*i*) or *non compos mentis*, and in the case of defendants who are at the time of such accrual beyond the seas. In the former case the action may be brought within six years from the removal of the disability. In the latter case, within six years after the defendants return from beyond the seas.(*j*)

Recovery of wages in inferior courts.

§ 516. In addition to the High Court, all such County Courts as have been appointed to have Admiralty jurisdiction have jurisdiction over any claim for wages where the amount claimed does not exceed one hundred and fifty pounds.(*k*) The Merchant Shipping Act, 1854,(*l*) also provides as follows for the recovery of wages before magistrates:

In a summary manner.

188. Any seaman (*m*) or apprentice, or any person duly authorised on his behalf, may sue in a summary manner before any two justices of the peace [or a stipendiary magistrate] (*n*) acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in Scotland either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final.(*o*)

Limitation of time in summary proceedings.

525.(*p*) The time for instituting summary proceedings under this Act shall be limited as follows: (that is to say)(*q*)

not sue in the Court of Admiralty for the price of medicines furnished to the crew; *The Lord Hobart*, 2 Dods. at p. 105.

(*f*) *Ross* v. *Walker*, 2 Wils. 264; 24 Vict. c. 10, s. 10. Pilotage dues are now recoverable summarily under 17 & 18 Vict. c. 104, s. 363; *infra*, § 578.

(*g*) See per Lord Coleridge, C.J., 25 Q. B. D. at p. 342.

(*h*) 4 & 5 Anne, c. 3, s. 17.

(*i*) See, however, 45 & 46 Vict. c. 75, s. 12 (Married Women's Property Act, 1882).

(*j*) 4 & 5 Anne, c. 3, ss. 18, 19, amended by 19 & 20 Vict. c. 97, s. 10. See also 21 Jac. I. c. 16, s. 3. No part of the United Kingdom, the Isle of Man, the Channel Islands, or any island adjacent to any of them, is deemed to be beyond the seas: 19 & 20 Vict. c. 97. s. 12.

(*k*) 31 & 32 Vict. c. 71, s. 3.

(*l*) See § 485, note (*e*), *supra*.

(*m*) "Seaman" does not, for this purpose, include a pilot; see 17 & 18 Vict. c. 104, s. 2; *supra*, § 465.

(*n*) 17 & 18 Vict. c. 104, s. 519.

(*o*) It seems doubtful whether the remedy given by this section extends to the personal representative of a deceased seaman. See *Hollingworth* v. *Palmer*, 4 Ex. 267, on 7 & 8 Vict. c. 112, s. 15; see, on the other hand, s. 196, which perhaps relates only to proceedings by the Board of Trade, and generally as to the mode of dealing with wages and effects of deceased seamen see §§ 519–522, *infra*.

(*p*) S. 189 (still unrepealed) enacts that "no suit or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any superior Court of record in Her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such court as aforesaid, or unless any justices acting

(3) No order for the payment of money shall be made under this Act in any summary proceeding instituted in the United Kingdom unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same:

(4) No order for the payment of money shall be made under this Act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within six months after they both first happen to arrive or be at one time within such jurisdiction:

And no provision contained in any other Act or Acts, Ordinance or Ordinances, for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this Act.

Determination of disputes by Marine Office superintendents.

We have seen above that a Marine Office superintendent is required to decide questions referred to him under agreement in writing, between masters or owners and seamen, and that they may also determine questions as to wages not exceeding five pounds.(*r*)

§ 517. The Merchant Shipping Act, 1854, places restrictions on suits for wages abroad as follows:—

No seaman to sue for wages abroad, except in cases of discharge or of danger to life.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom, shall be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as herein required, and with the written consent of the master, or proves such ill-usage on the part of the master or by his authority as to warrant reasonable apprehension of danger to the life of such seaman

under the authority of this Act refer the case to be adjudged by such court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore." This section was the subject of judicial interpretation in *The Harriet*, Lush. 285, and *The Blakeney*, Swab. 428. It would seem, however, to be now, so far at any rate as England is concerned, entirely superseded. The Admiralty Court Act, 1861 (24 Vict. c. 10), s. 10, gave, as we have seen (*supra* § 509), to the Admiralty Court "jurisdiction over any claim by a seaman for wages" (see 30 & 31 Vict. c. 114, s. 33, with regard to Ireland); but coupled with it a proviso "that if in any such cause the plaintiff do not recover £50 he shall not be entitled to any costs, unless the judges shall certify that the cause was a fit one to be tried in the said court." By the S. C. J. Act, 1873 (36 & 37 Vict. c. 66), ss. 5, 76, the jurisdiction of the Admiralty Court was transferred to the High Court; and by O. 65, r. 1 of the R. S. C., extended by 53 & 54 Vict. c. 44, s. 5, and superseding prior enactments, with regard to costs (see *e.g.*, *Rockett* v. *Clippingdale*, [1891] 2 Q. B. 293), costs are "in the discretion of the Court or judge." No doubt, however, the unreasonable institution of a suit for wages, not exceeding £50, would be deemed a reason for exercising the discretion adversely to the claimant. S. 189 would seem to be impliedly repealed also in such colonies as have adopted the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27 · see s. 3), but to be still operative in colonies which have not done so, see *The Ferret*, 8 Ap. Ca. 329.

(*q*) The remainder of this section will be found at § 549, *infra*.

(*r*) 17 & 18 Vict. c. 104, s. 173; 43 & 44 Vict. c. 16, s. 4 (5), *supra* § 487.

if he were to remain on board; but if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the court hearing the case thinks reasonable.

Relief to Seamen's Families out of Poor Rates.

§ 518. The following sections of the Merchant Shipping Act, 1854,(s) enable guardians of the poor to recover from shipowners a certain proportion of the wages of seamen whose wives or children become chargeable to the parish during their absence:

Relief to seamen's families to be chargeable on a certain proportion of their wages.

192. Whenever during the absence of any seaman on a voyage his wife, children, and step-children, or any of them, become or becomes chargeable to any union or parish in the United Kingdom, such union or parish shall be entitled to be reimbursed out of the wages of such seaman earned during such voyage any sums properly expended during his absence in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions of his said wages: (that is to say)

(1) If only one of such relations is chargeable, one half of such wages:

(2) If two or more of such relations are chargeable, two-thirds of such wages:

But if during the absence of the seaman any sums have been paid by the owner to or on behalf of any such relation as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement as aforesaid shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sum so paid.

Notice to be given to owner, and charge to be enforced on the return of the seaman.

193. For the purpose of obtaining such reimbursement as aforesaid, the guardians of the union or parish, where the relief of the poor is administered by guardians, and the overseers of the poor of any other parish in England, and the guardians or other persons having the authority of guardians in any union in Ireland, and the inspector of the poor in Scotland, may give to the owner of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make the claim, and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring such owner immediately on such return to give to such guardians, overseers, persons, or inspector notice in writing of such return; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim; and the said guardians, overseers, persons, or inspector may upon the seaman's return apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland to the sheriff of the county, for an order

(s) 17 & 18 Vict. c. 104.

for such reimbursement as aforesaid; and such justices or sheriff may hear the case, and may make an order for such reimbursement to the whole extent aforesaid, or to such lesser amount as they or he may under the circumstances think fit; and the owner shall pay to such guardians, overseers, persons, or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman; and if no such order as aforesaid is obtained within the period mentioned in the notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him as aforesaid shall immediately on the expiration of such period, and without deduction, be payable to the seaman.

Wages and Effects of Deceased Seamen.(*t*)

§ 519. The Merchant Shipping Acts contain the following provisions with respect to the recovery of and mode of dealing with the wages and effects of deceased seamen. By the principal Act:(*u*)

Seamen dying before wages due are paid.

184. If any seaman or apprentice to whom wages are due under [s. 183 (*x*)] dies before the same are paid, they shall be paid and applied in manner hereinafter specified with regard to the wages of seaman who die during a voyage.

The duties of the master with respect to the wages and effects of deceased seamen are prescribed as follows:—

Masters to take charge of or sell effects of deceased seamen which are on board, and enter the same and wages due in the official log.

194. Whenever any seaman or apprentice belonging to or sent home in any British ship, whether a foreign-going ship or a home-trade ship, employed on a voyage which is to terminate in the United Kingdom, dies during such voyage, the master shall take charge of all money, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of the said clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log-book containing the following particulars; (that is to say)

(1) A statement of the amount of the money and a description of the effects so left by the deceased:

(2) In case of a sale, a description of each article sold, and the sum received for each:

(3) A statement of the sum due to the deceased as wages,(*y*) and the total amount of the deductions (if any) to be made therefrom:

(*t*) By 17 & 18 Vict. c. 104, s. 109, "So much of the third part of this Act as relates to the delivery and transmission of lists of crews, and to the wages and effects of deceased seamen and apprentices, shall apply to all sea-going British ships, wherever registered, of which the crews are discharged, or whose final port of destination is in the United Kingdom, and to the owners, masters, and crews of such ships." And see s. 3, note (*m*) *supra*.

(*u*) 17 & 18 Vict. c. 104.

(*x*) *Supra* § 494.

(*y*) If a seaman dies in the course of the voyage, it is said by Heath, J., in *Beale* v. *Thompson* (3 B. & P. at p. 427), and seems to be admitted in *Armstrong* v. *Smith*, 1 N. R. 299, that his wages would be due and payable up to the time of his death, where this is not inconsistent with the terms of the contract. The American decisions upon this point are said to be conflicting: Maclachlan, 4th ed. 236, 238. If the agreement is to pay him a certain sum provided he do his duty during the whole voyage, and he dies before the termination of the voyage, no wages would have accrued due. *Cutter* v. *Powell*, 6 T. R. 320; 2 S. L. C. 1.

And shall cause such entry to be attested by a mate and by one of the crew.

Such effects and wages to be paid either to consul or to shipping master, with full accounts.

195. In the cases provided for by the last preceding section, the following rules shall be observed: (that is to say)

(1) If the ship proceeds at once to any port in the United Kingdom without touching on the way at any foreign port, the master shall within forty-eight hours after his arrival deliver any such effects as aforesaid remaining unsold, and pay any money which he has taken charge of or received from such sale as aforesaid, and also the balance of wages due to the deceased, to the [Marine Office superintendent] (*z*) at the port of destination in the United Kingdom:

(2) If the ship touches and remains for forty-eight hours at some foreign port or at some port in Her Majesty's dominions abroad before coming to any port in the United Kingdom, the master shall report the case to the British consular officer or officer of customs there, as the case may be, and shall give to such officer any information he requires as to the destination of the ship and probable length of the voyage; and such officer may thereupon, if he considers it expedient so to do, require the said effects, money, and wages to be delivered and paid to him, and shall upon such delivery and payment give to the master a receipt, and the master shall within forty-eight hours after his arrival at his port of destination in the United Kingdom produce the same to the [superintendent] there; and such consular officer or officer of customs shall in such case indorse and certify upon the agreement with the crew such particulars with respect to such delivery and payment as the Board of Trade requires:

(3) If such officer as aforesaid does not require such payment and delivery to be made to him, the master shall take charge of the said effects, money, and wages, and shall within forty-eight hours after his arrival at his port of destination in the United Kingdom deliver and pay the same to the [superintendent] there:

(4) The master shall in all cases in which any seaman or apprentice dies during the progress of a voyage or engagement give to the Board of Trade, or to such officer or [superintendent] as aforesaid, an account in such form as they respectively require of the effects, money, and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified, if there is any official log-book, by such entry therein as hereinbefore required,(*a*) and also by such other vouchers (if any) as may be reasonably required by the Board of Trade, or by the officer or [superintendent] to whom the account is rendered:

(5) Upon due compliance with such of the provisions of this section as relate to Acts to be done at the port of destination in the United Kingdom, the [superintendent] shall grant to the master a certificate to that effect, and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate.

Penalties for not taking charge of, remitting, or accounting for such monies and effects.

196. If any master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as hereinbefore respectively directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the Board of Trade, and shall pay and deliver the same

(*z*) 25 & 26 Vict. c. 63, s. 15.
(*a*) 17 & 18 Vict. c. 104, s. 282; *supra* § 124.

accordingly; and such master shall in addition for every such offence incur a penalty not exceeding treble the value of the money or effects not accounted for, or, if such value is not ascertained, not exceeding fifty pounds; and if any such money, wages, or effects are not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the said money and value, incur the same penalty which is hereinbefore mentioned as incurred by the master for the like offence; and all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.(*b*)

Officers of customs and consuls to take charge of effects left by seamen abroad, and to remit the same and their wages to Board of Trade.

197. If any such seaman or apprentice as last aforesaid [or if any seaman or apprentice who has within the six months immediately preceding his death belonged to a British ship (*c*)] dies abroad at any place either in or out of Her Majesty's dominions, leaving any money or effects not on board his ship, the chief officer of customs or the British consular officer at or nearest to the place, as the case may be, shall claim and take charge of such money and effects; and such officer shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions hereinbefore contained; and every such officer shall, quarterly or at such other times as the Board of Trade directs, remit to Her Majesty's paymaster-general all monies belonging to or arising from the sale of the effects of or paid as the wages of any deceased seamen or apprentices which have come to his hands under the provisions hereinbefore contained, and shall render such accounts in respect thereof as the Board of Trade requires.

By the Merchant Shipping Act, 1862:(*d*)

Recovery of wages, &c., of seamen lost with their ship.

21. The wages of seamen or apprentices who are lost with the ship to which they belong shall be dealt with as follows: (that is to say)

(1) The Board of Trade may recover the same from the owner of the ship in the same manner in which seamen's wages are recoverable:

(2) In any proceedings for the recovery of such wages, if it is shown by some official return produced out of the custody of the Registrar General of Seamen or by other evidence that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, and if it is not shown that she has been heard of within twelve months after such departure, she shall be deemed to have been lost with all hands on board, either immediately after the time she was last heard of or at such later time as the Court hearing the case may think probable:

(3) The production out of the custody of the Registrar General of Seamen or of the Board of Trade of any duplicate agreement or list of the crew made out at the time of the last departure of the ship from the United Kingdom, or of a certificate purporting to be a certificate from a consular or other public officer at any port abroad, stating that certain seamen or apprentices were shipped in the ship from the said

(*b*) This section does not, it seems, deprive the personal representative of a deceased seaman of the right to recover from the master wages due to the seaman beyond the amount accounted for. See *Armstrong* v. *Smith*, 1 B. & P. N. R. 299 (decided on 37 G. 3, C. 73).

(*c*) 25 & 26 Vict. c. 63, s. 20.

(*d*) 25 & 26 Vict. c. 63.

port, shall, in the absence of proof to the contrary, be sufficient proof that the seamen or apprentices therein named were on board at the time of the loss:

(4) The Board of Trade shall deal with such wages in the manner in which they deal with the wages of other deceased seamen and apprentices under the principal Act.

The principal Act continues:

Wages and effects of seamen dying at home to be paid in certain cases to Board of Trade.

198. Whenever any seaman or apprentice dies in the United Kingdom, and is at the time of his death entitled to claim from the master or owner of any ship in which he has served any unpaid wages or effects, such master or owner shall pay and deliver or account for the same to the [Marine Office superintendent] at the port where the seaman or apprentice was discharged or was to have been discharged, or to the Board of Trade, or as it directs.

§ 520. With respect to the distribution of the wages and effects(*e*) among those entitled to receive them, the principal Act provides:

If less than £50 wages and property of deceased seamen, may be paid over without probate or administration to the persons entitled.

199. If the money and effects of any deceased seaman or apprentice paid, delivered, or remitted to the Board of Trade or its agents, including the monies received for any part of the said effects which have been sold either before delivery to the Board of Trade or by its direction, do not exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the said Board thinks proper to allow, the said Board may, if it thinks fit so to do, pay and deliver the said money and effects either to any claimants who can prove themselves to the satisfaction of the said Board either to be his widow or children, or to be entitled to the effects of the deceased under his will (if any), or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, or to be entitled to procure probate or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered, or may, if it thinks fit so to do, require probate or letters of administration or confirmation to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased; and all claimants to whom such money or effects are so paid or delivered shall apply the same in due course of administration; and if such money and effects exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained and to deduction for expenses, the Board of Trade shall pay and deliver the same to the legal personal representatives of the deceased.

Mode of payment under wills made by seamen.

200. In cases where the deceased seaman or apprentice has left a will, the Board of Trade shall have the following powers: (that is to say)

(1) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person claiming to be entitled thereto under a will made on board ship unless such will is in writing, and is signed or acknowledged by the testator in the presence of the master or first or only mate of the ship, and is attested by such master or mate:

(*e*) Moneys of deceased persons in the Seamen's Savings Banks are to be similarly dealt with; 19 & 20 Vict. c. 41, s. 5, *supra* § 493.

(2) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person not being related to the testator by blood or marriage who claims to be entitled thereto under a will made elsewhere than on board ship, unless such will is in writing, and is signed or acknowledged by the testator in the presence of two witnesses, one of whom is some [Marine Office superintendent] appointed under this Act, or some minister or officiating minister or curate of the place in which the same is made, or, in a place where there are no such persons, some justice of the peace, or some British consular officer, or some officer of customs, and is attested by such witnesses:

Whenever any claim made under a will is rejected by the Board of Trade on account of the said will not being made and attested as hereinbefore required, the wages and effects of the deceased shall be dealt with as if no will had been made.

Provision for payment of just claims by creditors, and for preventing fraudulent claims.

201. The following rules shall be observed with respect to creditors of deceased seamen and apprentices: (that is to say)

(1) No such creditor shall be entitled to claim from the Board of Trade the wages or effects of any such seaman or apprentice, or any part thereof, by virtue of letters of administration taken out by him, or by virtue of confirmation in Scotland as executor creditor:

(2) No such creditor shall be entitled by any means whatever to payment of his debt out of such wages and effects, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after such death:

(3) Subject as aforesaid, the steps to be taken for procuring payment of such debt shall be as follows (that is to say): Every person making a demand as creditor shall deliver to the Board of Trade an account in writing in such form as it requires, subscribed with his name, stating the particulars of his demand and the place of his abode, and verified by his declaration made before a justice:

(4) If before such demand is made any claim to the wages and effects of the deceased made by any person interested therein as his widow or child, or under a will or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, has been allowed, the Board of Trade shall give notice to the creditor of the allowance of such person's claim, and the creditor shall thereupon have the same rights and remedies against such person as if he or she had received the said wages and effects as the legal personal representative of the deceased:

(5) If no claim by any such person has been allowed, the Board of Trade shall proceed to investigate the creditor's account, and may for that purpose require him to prove the same, and to produce all books, accounts, vouchers, and papers relating thereto; and if by such means the creditor duly satisfies the Board of Trade of the justice of the demand, either in the whole or in part, the same shall be allowed and paid accordingly, so far as the assets in the hands of the Board of Trade will extend for that purpose, and such payment shall discharge the Board of Trade from all further liability in respect of the money so paid; but if such Board is not so satisfied, or if such books, accounts, vouchers, or papers as aforesaid are not produced, and no sufficient reason is assigned for not producing them, the demand shall be disallowed:

(6) In any case whatever, the Board of Trade may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand; and if in the course of that time a claim to the wages and effects of the deceased

is made and substantiated as hereinbefore required by any person interested therein as a widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, the Board of Trade may pay and deliver the same to such person; and thereupon the creditor shall have the same rights and remedies against such person as if he or she had received the same as the legal personal representative of the deceased.

Mode of dealing with unclaimed wages of deceased seamen.

202. In cases of wages or effects of deceased seamen or apprentices received by the Board of Trade to which no claim is substantiated within six years after the receipt thereof by such Board, it shall be in the absolute discretion of such Board, if any subsequent claim is made, either to allow or to refuse the same.(*f*)

Dealing with unclaimed wages and effects the Merchant Shipping (Expenses) Act, 1882,(*g*) provides:

4. There shall be accounted for and paid to the Mercantile Marine Fund—

(d) The moneys arising from the unclaimed wages and effects of deceased seamen,(*i*) except where the same are required to be paid as directed by the accountant-general of Her Majesty's navy.

The principal Act continues:

Punishment for forgery and false representations in order to obtain wages and property of deceased seamen.

203. Every person who, for the purpose of obtaining, either for himself or for another, any money or effects of any deceased seaman or apprentice, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show or assist in showing a right to such wages or effects, and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes or procures to be given or made, or assists in giving or making or procuring to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with penal servitude for a term not exceeding four years, or with imprisonment with or without hard labour for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

Effects of seamen discharged from navy to be disposed of by accountant-general of navy.

204. In the case of seamen invalided or discharged from any of Her Majesty's ships, and sent home in merchant ships, any monies or effects belonging to them which are paid, remitted, or delivered to the Board of Trade, or its agents, under the provisions hereinbefore contained, shall be paid over and disposed of in such manner as the accountant-general of Her Majesty's navy directs.

Seamen joining the Navy.

Impressment.

§ 521. There is no doubt that the Crown still possesses, in cases of emergency, the power to impress seafaring men,(*k*) under its commission, for service in the Royal Navy.(*l*) Certain

(*f*) The remainder of this s. is repealed by 45 & 46 Vict. c. 55, s. 10.

(*g*) 45 & 46 Vict. c. 55. As to mode of dealing with wages deposited in Seamen's Savings Banks, see 19 & 20 Vict. c. 41, s. 5, *supra* § 493.

(*i*) Claims to moneys carried to this fund which the Board of Trade thinks fit to pay under s. 202 of the principal Act, are payable out of the fund; 45 & 46 Vict. c. 55, s. 3 (*f*).

(*k*) Officers, it seems, are not included in this description. Per Lord Mansfield, C.J., Cowp., at p. 519; *Chalacombe's Ca.* 13 East, 550, note.

(*l*) 1 Blackstone Comm. 420; ed. 1890,

statutory exemptions have been created: the more important of these relate to persons under 18 and above 55 years of age; to foreigners; to persons who have been at sea less than two, or, in the case of apprentices, less than three years;(*m*) to seamen holding certificates of service in the Navy, who are protected from service for periods of two years or one, according as they have been discharged after five years or any less period of service;(*n*) and to volunteers under the Naval Volunteers Act, 1853.(*o*)

Volunteering.

§ 522. Legislation has from time to time been passed for the purpose of encouraging seamen to volunteer for service in the Navy;(*p*) and for enabling the Admiralty to enrol volunteers for coast service,(*q*) and a volunteer reserve, for service in the fleet, in time of emergency.(*r*) A later statute empowers the Admiralty to accept the services, under such rules as the Admiralty may establish, of masters, mates and engineers in the merchant service as officers of the Royal Naval Reserve.(*s*)

The Merchant Shipping Act, 1854.

§ 523. For the purpose of enabling seamen to pass from the merchant service into the Navy, without incurring a forfeiture of wages, and without occasioning loss to their owners, the Merchant Shipping Act, 1854, contains the following provisions:—

Volunteering into the Navy.(*t*)

Seamen allowed to leave their ships in order to enter the Navy.

214. Any seaman may leave his ship for the purpose (*u*) of forthwith entering into the naval service of Her Majesty, and such leaving his ship shall not be deemed a desertion therefrom, and shall not render him liable to any punishment or forfeiture whatever (*x*); and all stipulations introduced into any agreement whereby any seaman is declared to incur any forfeiture or be exposed to any loss in case he enters into Her Majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding twenty pounds.

by Stephen, ii. 603. *R.* v. *Tubbs*, Cowp. 512; *Ex parte Boggin*, 13 East, 549; 16 & 17 Vict. c. 69, s. 7.

(*m*) 13 Geo. II. c. 17.

(*n*) 5 & 6 W. IV., c. 24, s. 2.

(*o*) 16 & 17 Vict. c. 73, s. 8.

(*p*) See 5&6 W. IV., c. 24, cited *supra*, and 16 & 17 Vict. c. 69, s. 4, entitling persons entering to a bounty.

(*q*) 16 & 17 Vict. c. 73.

(*r*) 22 & 23 Vict. c. 40. The Naval Artillery volunteers under 36 & 37 Vict. c. 77, were disbanded by O. in C., Mar. 16th, 1892.

(*s*) 26 & 27 Vict. c. 69; 35 & 36 Vict. c. 73, s. 17.

(*t*) By 17 & 18 Vict. c. 104, s. 109, "so much of the third part of this Act as relates to seamen volunteering into the Royal Navy shall apply to all sea-going British ships, wherever registered, and to the owners, masters, and crews of such ships, wherever the same may be." And see § 3 note (*m*), *supra*.

(*u*) A mariner, who quitted his vessel in defiance of the master, without any declaration at the time of his intention to enter the king's ship, although he did so within twenty-four hours afterwards, was held to have forfeited his wages, notwithstanding 2 Geo. III. c. 36, s. 13. *The Amphitrite*, 2 Hagg. 403; Maclachlan, 4th ed., 241.

(*x*) So before the statute a seaman who was impressed was usually entitled to his wages or emoluments for the time during which he had served. *Wiggins* v. *Ingleton*, 2 Lord Raym. 1211; *Paul* v. *Eden*, cited, Maclachlan, 4th ed., 241; Abbott, 13th ed., 780. If the seaman could show that his impressment was the result of the malicious act of the master, he was, it seems, entitled to his whole wages. Per Sir W. Scott, *The Jack Park*, 4 C. Rob. p. 311.

Clothes to be delivered at once.

215. Whenever any seaman, without having previously committed any act amounting to and treated by the master as desertion, leaves his ship in order to enter into the naval service of Her Majesty, and is received into such service, the master shall deliver to him his clothes and effects on board such ship, and shall pay the proportionate amount of his wages down to the time of such entry, subject to all just deductions, as follows: (that is to say) the master of the said ship shall pay the same to the officer authorised to receive such seaman into Her Majesty's service, either in money or by bill drawn upon the owner and payable at sight to the order of the Accountant-General of the Navy; and the receipt of such officer shall be a discharge for the money or bill so given; and such bill shall be exempt from stamp duty; and if such wages are paid in money, such money shall be credited in the muster-book of the ship to the account of the said seaman; and if such wages are paid by bill, such bill shall be noted in the said muster-book and shall be sent to the said Accountant-General, who shall present the same or cause the same to be presented for payment, and shall credit the produce thereof to the account of the said seaman; and such money or produce (as the case may be) shall not be paid to the said seaman until the time at which he would have been entitled to receive the same if he had remained in the service of the ship which he had so quitted as aforesaid; and if any such bill is not duly paid when presented, the said Accountant-General or the seaman on whose behalf the same is given may sue thereon or may recover the wages due by all or any of the means by which wages due to merchant seamen are recoverable; and if upon any seaman leaving his ship in the manner and for the purpose aforesaid, the master fails to deliver his clothes and effects, or to pay his wages as hereinbefore required, he shall, in addition to his liability to pay and deliver the same, incur a penalty not exceeding twenty pounds; provided that no officer who receives any such bill as aforesaid shall be subject to any liability in respect thereof, except for the safe custody thereof until sent to the said Accountant-General as aforesaid.

Wages to be given to the Queen's officer on account of the seamen.

Penalty if master fails to deliver or to pay.

Repayment to owner of advance paid and not duly earned.

216. If upon any seaman leaving his ship for the purpose of entering the naval service of Her Majesty, the owner or master of such ship shows to the satisfaction of the Admiralty that he has paid or properly rendered himself liable to pay an advance of wages to or on account of such seaman, and that such seaman has not at the time of quitting his ship duly earned such advance by service therein, and, in the case of such liability as aforesaid, if such owner or master actually satisfies the same, it shall be lawful for the Admiralty to pay to such owner or master so much of such advance as has not been duly earned, and to deduct the sum so paid from the wages of the seaman earned or to be earned in the naval service of Her Majesty.

By deduction from naval pay.

If new men are engaged instead of the original seamen, the owner may apply for repayment of any extra expense he has been put to.

217. If, in consequence of any seaman so leaving his ship without the consent of the master or owner thereof, it become necessary for the safety and proper navigation of the said ship to engage a substitute or substitutes, and if the wages or other remuneration paid to such substitute or substitutes for subsequent service exceed the wages or remuneration which would have been payable to the said seaman under his agreement for similar service, the master or owner of the said ship may apply to the registrar of the High Court of Admiralty in England for a certificate authorising the repayment of such excess; and such application shall be in such form, and shall be accompanied by such documents, and by such statements, whether on oath or otherwise, as the judge of the said Court from time to time directs.

218. The said registrar shall, upon receiving any such application as aforesaid, give notice thereof in writing, and of the sum claimed, to the secretary to the Admiralty, and shall proceed to examine the said application, and may call upon the Registrar-General of Seamen to produce any papers in his possession relating thereto, and may call for further evidence; and if the whole of the claim appears to him to be just, he shall give a certificate accordingly; but if he considers that such claim or any part thereof is not just, he shall give notice of such his opinion in writing under his hand to the person making the said application or his attorney or agent; and if within sixteen days from the giving of such notice such person does not leave or cause to be left at the office of the registrar of the said Court a written notice demanding that the said application shall be referred to the judge of the said Court, then the said registrar shall finally decide thereon, and certify accordingly; but if such notice is left as aforesaid, then the said application shall stand referred to the said judge in his chambers, and his decision thereon shall be final, and the said registrar shall certify the same accordingly; and the said registrar and judge respectively shall in every proceeding under this Act have full power to administer oaths and to exercise all the ordinary powers of the Court, as in any other proceeding within its jurisdiction; and the said registrar or judge (as the case may be) may, if he thinks fit, allow for the costs of any proceeding under this Act any sum not exceeding five pounds for each seaman so quitting his ship as aforesaid; and such sum shall be added to the sum allowed, and shall be certified by the said registrar accordingly.

Application how to be decided on, and amount of repayment how to be ascertained.

219. Every certificate so given shall be sent by post or otherwise to the person making the application, his attorney or agent, and a copy thereof shall be sent to the Accountant-General of the Navy; and such Accountant-General shall, upon delivery to him of the said original certificate, together with a receipt in writing purporting to be a receipt from the master or owner making the application, pay to the person delivering the same out of the monies applicable to the naval service of Her Majesty, and granted by Parliament for the purpose, the amount mentioned in such certificate; and such certificate and receipt shall absolutely discharge the said Accountant-General and Her Majesty from all liability in respect of the monies so paid or of the said application.

Accountant-General to pay sums when ascertained.

220. Every person who, in making or supporting any such application as aforesaid to the registrar of the High Court of Admiralty, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in making or supporting any such application presents or makes use of any such forged or altered document, or who in making or supporting any such application makes or gives, or assists in making or giving, or procures to be made or given, any false evidence or representation, knowing the same to be false, shall be deemed guilty of a misdemeanor.

Penalty for forgery and false representations in support of such applications.

Provisions, Health,(y) and Accommodation.(z)

§ 524. The law is clear, apart from statute, that seamen must be found with provisions as long as they remain on board and are willing to do their duty.*(a)* And if, owing to the ship's

(*y*) As to the powers of sanitary authorities, with respect to detention of vessels, &c., see 52 & 53 Vict. c. 64, s. 2.

(*z*) See § 485, note (*e*), *supra*.

(*a*) *The Castilia*, 1 Hagg. 59, 60. As to the right to subsistence money after quitting the ship, see §§ 489, 512 *supra*.

provisions being exhausted, the seamen have to provide themselves, they are entitled to receive board wages out of the proceeds of the ship.(*b*) The following sections of the Merchant Shipping Act, 1854,(*c*) are designed to secure the seamen against any deficiency in the quantity and quality of provisions supplied to them :—

Survey of provisions and water on complaint made.

221. Any three or more of the crew of any British ship may complain to any officer in command of any of Her Majesty's ships, or any British consular officer, or any [Mercantile Marine Office superintendent] (*d*) or any chief officer of customs, that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such officer may thereupon examine the said provisions or water, or cause them to be examined; and if on examination such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship; and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of a bad quality and unfit for use, he shall in every such case incur a penalty not exceeding twenty pounds; and upon every such examination as aforesaid the officers making or directing the same shall enter a statement of the result of the examination in the official log, and shall send a report thereof to the Board of Trade, and such report, if produced out of the custody of such Board or its officers, shall be received in evidence in any legal proceeding.

Penalty on master for not providing or procuring proper or sufficient provisions or water.

Forfeiture for frivolous complaint.

222. If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.(*e*)

In case of ships going through the Suez Canal, or round the Cape of Good Hope or Cape Horn.

The Merchant Shipping Act, 1892,(*e*) enforces inspection of provisions and water, without the necessity for a preliminary complaint, in the case of certain long voyages, as follows :—

3.—(1) In the case of ships trading or going from any port of the United Kingdom through the Suez Canal, or round the Cape of Good Hope or Cape Horn, the prescribed officer (*f*) shall in the prescribed manner, and before shipment whenever practicable, inspect the barrels of beef and pork, preserved meat and vegetables in tins, and the casks of flour or biscuits intended for the use of the crews of such ships, and shall in the prescribed manner, if satisfied that they are fit for such use, certify the same accordingly.

(2) The prescribed officer may at any time proceed on board a ship to ascertain whether the stores and water provided have been duly inspected, or if not, whether they are of a quality fit for the use of the crew of such ship. If he finds the same not to have been inspected, and deficient in quality, he shall detain the ship until such defects are remedied to his satisfaction.

(*b*) *The San José Primeiro*, 3 L. T. 513.
(*c*) 17 & 18 Vict. c. 104.
(*d*) 25 & 26 Vict. c. 63, s. 15.
(*e*) 55 & 56 Vict. c. 37.
(*f*) S. 4 empowers the Board of Trade to appoint officers for the purposes of inspection.

(3) No fee for such inspection shall be levied on the ship.

6.—(2) The Board of Trade may make rules (*g*) for the purposes of this Act and the expression "prescribed" means prescribed by rules so made. Rules.

The principal Act continues:—

223. In the following cases: (that is to say)

(1) If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore); Allowance for short or bad provisions.

(2) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use;

The seaman shall receive by way of compensation (*h*) for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages: (that is to say)

(1) If his allowance is reduced by any quantity not exceeding one third of the quantity specified in the agreement, a sum not exceeding fourpence a day;

(2) If his allowance is reduced by more than one-third of such quantity, eightpence a day;

(3) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day:

But if it is shown to the satisfaction of the Court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.(*i*)

225. Every master shall keep on board proper weights and measures for the purpose of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding ten pounds. Masters to keep weights and measures on board.

§ 525. The following sections relate to the supply of medicines and medical stores for seamen. By the Merchant Shipping Act, 1867: (*k*)

4. The following rules shall be observed with respect to medicines, medical stores and antiscorbutics: (that is to say) Lime or lemon juice and other anti-scorbutics to be provided and kept on board certain ships.

(1) The Board of Trade shall from time to time issue and cause to be published, scales (*l*) of medicines and medical stores suitable for different ships and voyages, and shall also prepare or sanction a book or books containing instructions for dispensing the same:

(*g*) The rules must be laid before Parliament, s. 5.

(*h*) General damages were awarded in addition for breach of the agreement, and hardships incurred in consequence, in *The Justitia*, 12 P. D. 145. As to whether the master can recover compensation under this section, see *supra* § 73.

(*i*) See *The Josephine*, Sw. 152.

(*k*) 30 & 31 Vict. c. 124.

(*l*) See Appx. No. 8.

(2) The owners of every ship navigating between the United Kingdom and any place out of the same shall provide and cause to be kept on board such ship a supply of medicines and medical stores in accordance with the scale appropriate to the said ship, and also a copy of the said book or of one of the said books containing instructions:

(3) No lime or lemon juice shall be deemed fit and proper to be taken on board any such ship for the use of the crew or passengers thereof, unless the same has been obtained from a bonded warehouse for and to be shipped as stores; and no lime or lemon juice shall be so obtained or delivered from any warehouse as aforesaid unless the same is shown, by a certificate under the hand of an inspector appointed by the Board of Trade, to be proper (*m*) for use on board ship, such certificate to be given upon inspection of a sample after deposit of the said lime or lemon juice in the warehouse; nor unless the same contains fifteen per centum of proper and palatable proof spirits, to be approved by such inspector, or by the proper officer of customs, and to be added before or immediately after the inspection thereof; nor unless the same is packed in such bottles, at such time and in such manner, and is labelled in such manner as the commissioners of customs may direct; provided that when any such lime or lemon juice is deposited in any bonded warehouse, and has been approved as aforesaid by the said inspector, the said spirits, or so much of the said spirits as is necessary to make up fifteen per centum, may be added in such warehouse, without payment of any duty thereon; and when any spirit has been added to any lime or lemon juice, and the same has been labelled as aforesaid, it shall be deposited in the warehouse for delivery as ship's stores only, upon such terms and subject to such regulations of the commissioners of customs as are applicable to the delivery of ship's stores from the warehouse:

(4) The master or owner of every such foreign-going ship (except those bound to European ports or to ports in the Mediterranean Sea, and also except such ships or classes of ships bound to ports on the eastern coast of America north of the thirty-fifth degree of north latitude, and to any islands or places in the Atlantic Ocean north of the same limit, as the Board of Trade may from time to time exempt from this enactment) shall provide and cause to be kept on board such ship a sufficient quantity of lime or lemon juice from the warehouse, duly labelled as aforesaid, such labels to remain intact until twenty-four hours at least after such ship shall have left her port of departure on her foreign voyage, or a sufficient quantity of such other anti-scorbutics, if any, of such quality and composed of such materials, and packed and kept in such manner, as Her Majesty by order in council may from time to time direct:

Anti-scorbutics to be served out.

(5) The master of every such ship as last aforesaid shall serve or cause to be served out the lime or lemon juice with sugar (such sugar to be in addition to any sugar required by the articles) or other such anti-scorbutics as aforesaid, to the crew so soon as they have been at sea for ten days, and during the remainder of the voyage, except during such time as they are in harbour and are there supplied with fresh provisions; the lime or lemon juice and sugar to be served out daily at the rate of an ounce each per day to each member of the crew, and to be mixed with a due proportion of water before being served out, or the other anti-scorbutics, if any, at such times and in such quantities as Her Majesty by order in council may from time to time direct:

(*m*) See Board of Trade Regulations as to supply, &c., of lime and lemon juice Appendix No. 9.

(6) If at any time when such lime or lemon juice or anti-scorbutics is or are so served out as aforesaid any seaman or apprentice refuses or neglects to take the same, such neglect or refusal shall be entered in the official log book in the manner provided by the two hundred and eighty-first section of the principal Act,(*n*) and shall be signed by the master and by the mate or some other of the crew, and also by the surgeon or medical practitioner on board, if any:

Refusal to take same to be entered in log.

And if in any such ship as aforesaid such medicines, medical stores, book of instructions, lime or lemon juice, sugar, or anti-scorbutics as are hereinbefore required are not provided, packed, and kept on board as hereinbefore required, the owner or master shall be deemed to be in fault, and shall for each default incur a penalty not exceeding twenty pounds, unless he can prove that the non-compliance with the above provisions, or any of them, was not caused through any inattention, neglect, or wilful default on his part; and if the lime or lemon juice and sugar or other anti-scorbutics are not served out in the case and manner hereinbefore directed, or if entry is not made in the official log in the case and manner hereinbefore required, the master shall be deemed to be in fault, and shall for each default incur a penalty not exceeding five pounds, unless he can prove that the non-compliance with the above provisions, or any of them, did not arise through any neglect, omission, or wilful default on his part; and if in any case it is proved that some person other than the master or owner is in default in any case under this section, then such other person shall be liable to a penalty not exceeding twenty pounds.(*o*)

Penalty on owner and master for not complying with above provisions.

5. Any person who manufactures, sells, or keeps or offers for sale any such medicines or medical stores as aforesaid which are of bad quality, shall for each such offence incur a penalty not exceeding twenty pounds.

Penalty for selling, &c., medicines, &c., of bad quality.

6. In any British possession out of the United Kingdom the governor or officer administering the government for the time being shall, subject to the laws of such possession, have power to make regulations concerning the supply within such possession of lime or lemon juice and anti-scorbutics for the use of ships; and any lime or lemon juice or anti-scorbutics duly supplied in accordance with any such regulations shall be deemed to be fit and proper for the use of ships.

Power to governors, &c., to make regulations as to supply of lime or lemon juice, &c.

The principal Act continues:

226. Any local marine board may, upon being required by the Board of Trade so to do, appoint and remove a medical inspector of ships for the port, and may fix his remuneration, such remuneration to be subject to the control of the Board of Trade, and at ports where there are no local marine boards the Board of Trade may appoint and remove such inspectors, and fix their remuneration; and it shall be the duty of such inspectors to inspect the medicines, medical stores, lime or lemon juice, or other articles, sugar and vinegar, required to be kept on board any such ships as aforesaid; and such inspection, if made at places where there are local marine boards, shall be made under their direction, and also in any special cases under the direction of the Board of Trade, and if made at places where there are no local marine boards, shall be

Board of Trade and local boards may appoint inspectors of medicines, who are to see that ships are properly provided.

(*n*) *Supra*, § 124.

(*o*) Under the corresponding section of an earlier Act (7 & 8 Vict. c. 112, s. 18), it was held that, notwithstanding the provision for enforcing by penalty the statutory duty, the seaman had a right of action in respect of any private injury sustained by him from its breach; *Couch* v. *Steel*, 3 E. & B. 402, and see 30 & 31 Vict. c. 124, s. 7, *infra* § 526. The correctness of this decision has, however, been doubted in the Court of Appeal; *Atkinson* v. *Newcastle, &c., Co.*, 2 Ex. D. 441.

made under the direction of the Board of Trade; and such medical inspectors shall for the purposes of such inspection have the same powers as the inspectors appointed by the Board of Trade under the first part of this Act;(*oo*) but every such inspector, if required by timely notice in writing from the master, owner, or consignee, shall make his inspection three days at least before the ship proceeds to sea, and if the result of the inspection is satisfactory, shall not again make inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured, or destroyed; and whenever any such medical inspector is of opinion that in any ship hereby required to carry such articles as aforesaid the same or any of them are deficient in quantity or quality, or are placed in improper vessels, he shall signify the same in writing to the chief officer of customs of the port where such ship is lying, and also to the master, owner, or consignee thereof, and thereupon the master of such ship, before proceeding to sea, shall produce to such chief officer of customs a certificate under the hand of such medical inspector or of some other medical inspector, to the effect that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels, as the case may require; and such chief officer of customs shall not grant a clearance for such ship without the production of such certificate, and if such ship attempts to go to sea without a clearance, may detain her until such certificate is produced; and if such ship proceeds to sea without the production of such certificate, the owner, master, or consignee thereof shall incur a penalty not exceeding twenty pounds.

§ 526. Provision is also made by the following sections for the medical expenses of seamen in case of illness; and for the employment of medical officers in certain ships.

By the Merchant Shipping Act, 1854:

Expense of medical attendance and subsistence in case of illness, and of burial in case of death, how to be defrayed.

228. The following rules shall be observed with respect to expenses attendant on illness and death: (that is to say)

(1) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some British possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship, without any deduction (*p*) on that account from the wages of such master, seaman, or apprentice:

(2) If the master or any seaman or apprentice is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice with attendance and medicines, and of his subsistence whilst away from the ship, shall be defrayed in like manner:

(3) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman, or apprentice whilst on board his ship shall be defrayed in like manner:

(4) In all other cases any reasonable expenses duly incurred by the

(*oo*) See § 46, note (*y*) *supra*.

(*p*) And see § 496 *supra*; but he loses his wages during illness caused by his own default; 30 & 31 Vict. c. 124, s. 8, *supra* § 500.

owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice.

Expenses, if paid by consul to be recoverable from owner.

229. If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice, as are to be borne by the owner, are paid by any consular officer or other person on behalf of Her Majesty, or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions hereinbefore contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for the time being as a debt due to Her Majesty, and shall be recoverable either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages; and in any proceeding for the recovery thereof the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

By the Merchant Shipping Act, 1867:(*q*)

Seamen's expenses in cases of illness through neglect of owner or master to be paid by them.

7. Whenever it is shown that any seaman or apprentice who is ill has, through the neglect of the master or owner, not been provided with proper food and water according to his agreement, or with such accommodation, medicines, medical stores, or anti-scorbutics as are required by the principal Act or by this Act, then, unless it can be shown that the illness has been produced by other causes, the owner or master shall be liable to pay all expenses properly and necessarily incurred by reason of such illness (not exceeding in the whole three months' wages), either by such seaman himself, or by Her Majesty's Government, or any officer of Her Majesty's Government, or by any parochial or other local authority on his behalf, and such expenses may be recovered in the same way as if they were wages duly earned: Provided that this enactment shall not operate so as to affect any further liability of any such owner or master for such neglect, or any remedy which any seaman already possesses.

By the Merchant Shipping Act, 1854:

Certain ships to carry medical practitioners.

230. Every foreign-going ship having one hundred persons or upwards on board shall carry on board as part of her complement some person duly authorised by law to practise as physician, surgeon, or apothecary; and in default the owner shall for every voyage of any such ship made without such medical practitioner incur a penalty not exceeding one hundred pounds: Provided that nothing herein contained shall in anywise affect any provision contained in the "Passengers Act, 1852,"(*qq*) concerning the carriage of medical practitioners by the class of ships therein named passenger ships, nor shall any such passenger ship, if not thereby required to carry a medical practitioner, be hereby required to do so.

§ 527. The Merchant Shipping Act, 1867,(*q*) further aims at securing the health of seamen by requiring them to be

(*q*) 30 & 31 Vict. c. 124.
(*qq*) Repealed. See now 18 & 19 Vict. c. 119, ss. 41 & 42, *infra* § 614.

furnished with proper accommodation on board, and providing for their medical inspection on shore. The following clauses deal with these subjects:

9. The following rules shall be observed with respect to accommodation on board British ship: (that is to say)

Place appropriated to seamen to have a certain space for each man, and to be properly constructed and kept clear.

(1) Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every such seaman or apprentice a space of not less than twelve superficial feet measured on the deck or floor of such places:

(2) Every such place shall be such as to make the space aforesaid available for the proper accommodation of the men who are to occupy it, shall be securely constructed, properly lighted and ventilated, properly protected from weather and sea, and as far as practicable properly shut off and protected from effluvium which may be caused by cargo or bilge water:

(3) No such place as aforesaid shall be deemed to be such as to authorise a deduction from registered tonnage, under the provisions hereinafter contained, unless there is or are in the ship one or more properly constructed privy or privies for the use of the crew; such privy or privies to be of such number and of such construction as may be approved by the surveyor hereinafter mentioned:

(4) Every such place shall, whenever the ship is registered or re-registered, be inspected by one of the surveyors appointed by the Board of Trade under Part IV. of the principal Act,(*r*) who shall, if satisfied that the same is in all respects such as is required by this Act, give to the collector of customs a certificate to that effect, and thereupon such space shall be deducted from the register tonnage:

(5) No such deduction from tonnage as aforesaid shall be authorized unless there is permanently cut in a beam, and cut in or painted on or over the doorway or hatchway of every such place, the number of the men which it is constructed to accommodate, with the words "Certified to accommodate Seamen":

(6) Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage:

(7) Upon any complaint concerning any such place as aforesaid, one of the surveyors appointed by the Board of Trade (*r*) may inspect such place, and if he finds that any of the provisions of this Act with respect to the same are not complied with, he shall report the same to the collector of customs at the port where the ship is registered, and thereupon the registered tonnage shall be altered, and the deduction aforesaid in respect of space disallowed, unless and until it shall be certified by such surveyor, or by some other surveyor appointed by the Board of Trade, that the provisions of the Act in respect of such place are fully complied with:

(8) If any such place in any ship is not kept free from goods and stores as aforesaid, the master shall be deemed to be in fault, and shall for every such failure to comply with the provisions of this section forfeit and pay to each seaman lodged in such place the sum of one shilling a day for each day after complaint made to him by any two or more of such seamen during which any goods or stores, not being the personal property of the crew, are stored or kept therein:

(9) If in any other respect the provisions of this section are not

(*r*) Sect. 305; *infra* § 597. The powers of a Board of Trade surveyor with respect to inspection of crew spaces are exercisable in any British possession by a surveyor appointed by the Governor of that possession. 31 & 32 Vict. c. 129, s. 3. As to tonnage measurement see also 17 & 18 Vict. c. 104, ss. 20–24, 26–29; and 52 & 53 Vict. c. 43.

observed with respect to any such place in any ship the owner shall be deemed to be in fault, and shall for every failure to comply with the provisions of this section incur a penalty not exceeding twenty pounds.

Rules for medical inspection of seamen.

10. The following rules shall be observed with respect to the medical inspection of seamen: (that is to say)

(1) At any port where there is a local marine board, the local marine board, and at other ports in the United Kingdom the Board of Trade, may appoint a medical inspector of seamen:

(2) Such medical inspector of seamen shall, on application by the owner or master of any ship, examine any seaman applying for employment in such ship, and shall give to the superintendent of the Mercantile Marine office a report under his hand stating whether such seaman is in a fit state for duty at sea, and a copy of such report shall be given to the master or owner of the ship:

(3) The master or owner applying for such inspection shall pay to the superintendent such fees as the Board of Trade direct, and such fees shall be paid into and form part of the Mercantile Marine Fund;

(4) The said medical inspectors shall be remunerated for their services as the Board of Trade may direct, and such remuneration shall be paid out of the Mercantile Marine Fund:

(5) In British possessions out of the United Kingdom the governor or other officer administering the government for the time being shall have the power of appointing medical inspectors of seamen, of charging fees for inspections when applied for, and of determining the remuneration to be paid to such inspectors.

Protection against Unseaworthiness.

Seaworthiness.

§ 528. It has already been seen that there is no implied warranty in the seaman's contract that the ship shall be seaworthy.

The principal Act empowers the Board of Trade to appoint inspectors to report on any damage or accident caused by or to any ship; whether the provisions of the Act have been complied with; and on the efficiency and condition of hull and machinery of any steamship (*s*). The Acts of 1871 and 1873 enable seamen in certain cases to require a survey of ships, and relieve them from the consequences of refusal to proceed to sea in ships which prove, upon survey, to be unseaworthy.

By the Merchant Shipping Act, 1871, s. 5:(*t*)

Ship's draught of water to be recorded.

The Board of Trade may, in any case or class of cases in which they think it expedient so to do, direct any person appointed by them for the purpose to record, in such manner and with such particulars as the Board of Trade direct, the draught of water of any sea-going ship, as shown on the scale of feet on her stem and on her stern post, upon her leaving any dock, wharf, port or harbour for the purpose of proceeding to sea; and such person shall thereupon keep such record, and shall from time to time forward the same, or a copy thereof, to the Board of Trade; and such record, or any copy thereof, if produced by or out of the custody of the Board of Trade, shall be admissible in evidence of the draught of water of the ship at the time specified in the record.

And by the Merchant Shipping Act, 1873,(*u*) s. 4:

(*s*) 17 & 18 Vict. c. 104, s. 14. See § 46, note (*y*) *supra*.

(*t*) 34 & 35 Vict. c. 110. The remainder of this and the next cited section, relating to the master's duty to record the draught of water in the log, and to produce his record, will be found in § 125 *supra*.

(*u*) 36 & 37 Vict. c. 85.

Penalty.

Every master of a sea-going ship shall, upon the request of any person appointed to record the ship's draught of water, permit such person to enter the ship, and to make such inspections, and take such measurements as may be requisite for the purpose of such record, and any master who fails so to do, or impedes, or suffers any one under his control to impede any person so appointed in the execution of his duty, shall for each offence incur a penalty not exceeding five pounds.

The Merchant Shipping Act, 1871, further provides:

Survey of ships alleged by seamen to be unseaworthy.

7. Whenever in any proceeding against any seaman or apprentice belonging to any ship for desertion, or for neglecting or refusing to join or to proceed to sea in his ship, or for being absent from or quitting the same without leave, it is alleged by one-fourth of the seamen belonging to such ship, or, if the number of such seamen exceed twenty, by not less than five such seamen, that such ship is by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in such ship is insufficient, the Court having cognizance of the case shall take such means as may be in their power to satisfy themselves concerning the truth or untruth of such allegation, and shall for that purpose receive the evidence of the person or persons making the same, and shall have power to summon any other witnesses whose evidence they may think it desirable to hear; the Court shall thereupon, if satisfied that the allegation is groundless, proceed to adjudicate, but if not so satisfied shall cause such ship to be surveyed:

Provided that no seaman or apprentice charged with desertion, or with quitting his ship without leave, shall have any right to apply for a survey under this section unless previously to his quitting his ship he has complained to the master of the circumstances so alleged in justification.

For the purposes of this section, the Court shall require any of the surveyors appointed by the Board of Trade under the Merchant Shipping Act, 1854,(*v*) or any person appointed for the purpose by the Board of Trade, or, if such surveyor or person cannot be obtained without unreasonable expense or delay, or is not, in the opinion of the Court, competent to deal with the special circumstances of the case, then any other impartial surveyor appointed by the Court, and having no interest in the ship, her freight, or cargo, to survey the ship, and to answer any question concerning her which the Court may think fit to put. Such surveyor or other person shall survey the ship, and make his report in writing to the Court, including an answer to every question put to him by the Court. The Court shall cause such report to be communicated to the parties, and unless it is proved to the satisfaction of the Court that the opinions expressed in such report are erroneous, the Court shall determine the questions before them in accordance with those opinions.

For the purposes of such survey, a surveyor shall have all the powers of an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854.(*w*)

The costs (if any) of the survey shall be determined by the Board of Trade according to a scale of fees to be fixed by them, and shall be paid in the first instance out of the Mercantile Marine Fund.

If it is proved to the satisfaction of the Court that the ship is in a fit condition to proceed to sea, or, as the case may be, that the accommodation is sufficient, the costs of the survey shall be paid by the person or persons upon whose demand, or in consequence of whose allegation, the

(*v*) See § 597 *infra*. (*w*) See § 46, note (*y*) *supra*.

survey was made, and may be deducted by the master or owner out of the wages due or to become due to such person or persons, and shall be paid over to the Board of Trade.

If it is proved that the ship is not in a fit condition to proceed to sea, or, as the case may be, that the accommodation is insufficient, the costs of the survey shall be paid to the Board of Trade by the master or owner.

By the Merchant Shipping Act, 1873,(x) s. 9:

Compensation to seamen for unnecessary detention on charge of desertion.

If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and if upon a survey of the ship being made under section seven of the Merchant Shipping Act, 1871, it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the Court having cognizance of the proceedings may award.

The Merchant Shipping Act, 1871, continues:

Power for Naval Courts to direct survey of ships.

8. Any naval court may, if they think fit, direct a survey of any ship which is the subject of an investigation held before them, and such survey shall be made in the same way, and the surveyor who makes the same shall have the same powers, as if the survey had been directed by a competent court in the course of proceedings against a seaman or apprentice for desertion or a kindred offence.

§ 529. In recent years, enactments of a far more stringent character have been passed with the object of protecting seamen from being sent to sea in unseaworthy ships.

By the Merchant Shipping Act, 1876:(y)

Sending unseaworthy ship to sea a misdemeanor.

4. Every person who sends or attempts to send, or is party to sending or attempting to send, a British ship to sea in such unseaworthy(z) state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanor, unless he proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that he going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

Every master of a British ship who knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanor, unless he proves that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

A prosecution under this section shall not be instituted except by or with the consent of the Board of Trade, or of the governor of the British possession in which such prosecution takes place.

A misdemeanor under this section shall not be punishable upon summary conviction.

5. In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instru-

(x) 36 & 37 Vict. c. 85. (y) 39 & 40 Vict. c. 80.
(z) See *Hedley* v. *Pinkney, &c., Co.*, (1892) 1 Q. B. 58.

Obligation of shipowner to crew with respect to use of reasonable efforts to secure seaworthiness.

ment of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy (*a*) condition for the voyage during the same: Provided, that nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state, where, owing to special circumstances, the so sending thereof to sea is reasonable and justifiable.

Power to detain unsafe ships, and procedure for such detention.

6. Where a British ship, being in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereinafter referred to as "unsafe") may be provisionally detained for the purpose of being surveyed, and either finally detained or released, as follows:

(1) The Board of Trade, if they have reason to believe on complaint, or otherwise, that a British ship is unsafe, may provisionally order the detention of the ship for the purpose of being surveyed.

(2) When a ship has been provisionally detained there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship and report thereon to the Board.

(3) The Board of Trade on receiving the report may either order the ship to be released, or, if in their opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Board think necessary for the protection of human life, and may from time to time vary or add to any such order.

(4) Before the order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master of the ship may appeal in the prescribed manner to the court of survey (hereinafter mentioned) for the port or district where the ship is detained.

(5) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes such survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the

(*a*) *I.e.*, it seems, "seaworthy, with regard to the safety of the crew." See per Lord Esher, M.R., [1892] 1 Q. B. at p. 65. Neglect on the part of the master, where the ship is properly equipped, to use any part of her equipment, does not render her unseaworthy. Therefore, where a seaman lost his life through the failure of the master to use during a storm a movable rail by which an opening in the bulwarks should have been closed, it was held that the accident was due to the negligence of the master, who was the fellow-servant of the seaman, and not to the unseaworthiness of the ship, and that the seaman's widow could not recover damages against the shipowners for the loss of her husband (*Hedley* v. *Pinkney, &c., Co.*, [1892] 1 Q. B. 58.) This case has been carried to the

court of survey (nominated as hereinafter mentioned), and in such case if the surveyor and assessor agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is before provided by this section.

(6) Where a ship has been provisionally detained, the Board of Trade may at any time, if they think it expedient, refer the matter to the court of survey for the port or district where the ship is detained.

(7) The Board of Trade may at any time, if satisfied that a ship detained under this Act is not unsafe, order her to be released either upon or without any conditions.

(8) For the better execution of this section, the Board of Trade, with the consent of the Treasury, may from time to time appoint a sufficient number of fit officers, and may remove any of them.

(9) Any officer so appointed (in this Act referred to as a detaining officer) shall have the same power as the Board of Trade have under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

(10) A detaining officer shall forthwith report to the Board of Trade any order made by him for the detention or release of a ship.

Constitution of court of survey for appeals.

7. A court of survey for a port or district shall consist of a judge sitting with two assessors.

[The judge to be summoned for the case in accordance with rules made under the Act out of a list (to be approved by a Secretary of State) of wreck commissioners,(*b*) stipendiary or metropolitan police magistrates, judges of county courts, and other fit persons; but in any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner.

The assessors to be persons of nautical engineering or other special skill and experience; one to be appointed by the Board of Trade, and the other to be summoned in accordance with the rules by the registrar of the court (who is to be the county court registrar or such other fit person as a Secretary of State may appoint) out of a list of persons periodically nominated by the local marine board,(*c*) or, if there is no such board, by a body of local shipowners or merchants approved by a Secretary of State, or if there is no such list, to be appointed by the judge.

It is the registrar's duty to summon the court immediately on receiving notice of an appeal or a reference from the Board of Trade.

The name of the registrar and his office, together with the rules made under the Act, is to be published in manner prescribed by the rules.]

Power and procedure of court of survey.

8. With respect to the court of survey the following provisions shall have effect:

(1) The case shall be heard in open court:

(2) The judge and each assessor may survey the ship, and shall have for the purposes of this Act all the powers of an inspector

House of Lords, but judgment has not yet been delivered.

(*b*) As to the appointment of wreck commissioners, see 39 & 40 Vict. c. 80, s. 29, *supra* § 48.

(*c*) See § 3 *supra*.

appointed by the Board of Trade under the Merchant Shipping Act, 1854 ;(*cc*)

(3) The judge may appoint any competent person or persons to survey the ship and report thereon to the court;

(4) The judge shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released;

(5) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section;

(6) The judge shall send to the Board of Trade the prescribed report, and each assessor shall either sign the report or report to the Board of Trade the reasons for his dissent.

Rules for procedure of court of survey, &c.

9. [Empowers the Lord Chancellor (with the consent of the Treasury so far as relates to fees), to make general rules to carry into effect the provisions of the Act with respect to a court of survey. Such rules to have effect as if enacted in the Act.](*d*)

Liability of Board of Trade and shipowner for costs and damages.

10. If it appears that there was not reasonable and probable cause(*dd*) by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship, the Board of Trade shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage(*e*) sustained by him by reason of the detention or survey.

If a ship is finally detained under this Act, or if it appears that a ship provisionally detained was, at the time of such detention, unsafe within the meaning of this Act, the owner of the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

For the purposes of this Act the costs of and incidental to any proceeding before a court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Board of Trade, shall be deemed to be part of the costs of detention and survey of the ship, and any dispute as to the amount of costs under this Act may be referred to one of the masters or registrars of the Supreme Court of Judicature, who, on request made to him for that purpose by the Board of Trade, shall ascertain and certify the proper amount of such costs.

An action for any costs or compensation payable by the Board of Trade under this section may be brought against the secretary thereof by his official title as if he were a corporation sole.(*f*)

[In Ireland the writ may, by order of the Court, be served on the Crown and Treasury Solicitor.]

By the Merchant Shipping Act, 1892 : (*g*)

(*cc*) See § 46, note (*y*), *supra*.

(*d*) See the Current Rules, Appx. No. 10.

(*dd*) As to the proper direction to a jury on this question, see *Thompson* v. *Farrer*, 9 Q. B. D. 372 ; cp. *Lewis* v. *Gray*, 1 C. P. D. 452, decided under the repealed enactment (36 & 37 Vict. c. 85, ss. 12, 13, 14).

(*e*) This does not entitle the shipowner to recover damages for the injury done to his reputation by the detention of his ship. *Dixon* v. *Calcraft*, (1892) 1 Q. B. 458.

(*f*) In such an action the Attorney-General is entitled, on behalf of the Crown, to demand a trial at bar, or, on his waiving that right, to have the venue changed, under the Crown Suits Act (28 & 29 Vict. c. 104), s. 46, to any county he may select. *Dixon* v. *Farrer*, 18 Q. B. D. 43.

(*g*) 55 & 56 Vict. c. 37.

1. Every ship so loaded as to submerge in salt water the centre of the disc placed thereon in pursuance of the Merchant Shipping Acts, 1876 to 1890, and the regulations made thereunder, shall be deemed to be "unsafe" within the meaning of the Merchant Shipping Act, 1876, and such submersion shall be reasonable and probable cause for the detention of the ship.

Ships with submerged load lines to be deemed to be unsafe.

And the Act of 1876 continues:

11. Where a complaint is made to the Board of Trade or a detaining officer that a British ship is unsafe, the Board or officer may, if they or he think fit, require the complainant to give security to the satisfaction of the Board for the costs and compensation which he may become liable to pay as hereinafter mentioned.

Power to require from complainant security for costs.

Provided that where the complaint is made by one fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of the Board or officer frivolous or vexatious, such security shall not be required, and the Board or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained under this Act.

Where a ship is detained in consequence of any complaint, and the circumstances are such that the Board of Trade are liable under this Act to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Board of Trade all such costs and compensation as the Board incur or are liable to pay in respect of of the detention and survey of the ship.

12. (1) A detaining officer shall have for the purpose of his duties under this Act the same powers as an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854.(*h*)

Supplemental provisions as to detention of ships.

(2) An order for the detention of a ship, provisional or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(3) When a ship has been detained under this Act she shall not be released by reason of her British register being subsequently closed.

(4) For the purposes of a survey of a ship under this Act any person authorised to make the same may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle.

(5) The provisions of the Merchant Shipping Act, 1854,(*h*) with respect to persons who wilfully impede an inspector, or disobey a requisition or order of an inspector, shall apply as if those provisions were herein enacted, with the substitution for the inspector of any judge, assessor, officer, or surveyor who under this Act has the same powers as an inspector or has authority to survey a ship.

13. [Applies the provisions of the Act as to detention of foreign ships,(*i*) which, having cargo at a port in the United Kingdom, are while there unsafe (*k*) by reason of overloading or improper loading, with the following modifications:]

Application to foreign ships of provisions as to detention.

(*h*) 17 & 18 Vict. c. 104, ss. 15, 16; *supra* § 46, note (*y*).

(*i*) Without the necessity for an order in Council, *Chalmers* v. *Scopenich*, (1892) 1 Q. B. 735.

(*k*) *I.e.*, "unsafe for going to sea," per Denman and A. L. Smith, J.J. *Chalmers* v. *Scopenich*, at pp. 738-9.

(1) A copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the State to which the ship belongs at or nearest to the place where the ship is detained:

(2) Where a ship has been provisionally detained, the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Board of Trade to survey the ship shall be accompanied by such person as the consular officer may select, and in such case, if the surveyor and such person agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the appeal to the court of survey touching the report of the surveyor which is before provided by this Act; and

(3) Where the owner or master of the ship appeals to the court of survey, the consular officer, on the request of such owner or master, may appoint any competent person who shall be assessor in such case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.

Enforcing detention of ship.

34.(*l*) [Empowers any commissioned officer on full pay in the army or navy, or any officer of the Board of Trade or Customs, or British consular officer to detain ships ordered to be detained, and provides that] if the ship after such detention or after service on the master of any notice of or order for such detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if such owner or person be party or privy to the offence, shall forfeit and pay to Her Majesty a penalty not exceeding one hundred pounds.

Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or Customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also a penalty not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and such expenses may be recovered in like manner as the penalty.

Service of order on master, &c.

35. [Authorises service, where there is no master, and the ship is in the United Kingdom, of documents required for the purposes of the Act to be served on the master of a ship, on the managing owner, or if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy to the mast of the ship.

Service may be made by delivering a copy personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command or charge of her.

Any person who obstructs service on the master incurs a penalty not exceeding ten pounds, and if the owner or master of the ship is party to such obstruction he is guilty of a misdemeanor.]

(*l*) This section may be put in force against the master of a foreign ship, which falls within the provisions of s. 13 (*sup.*) although no order in Council has been made under s. 37: *supra* § 3, note (*m*); *Chalmers* v. *Scopenich*, (1892) 1 Q. B. 735.

40. For the purpose of punishment, jurisdiction, and legal proceedings an offence under this Act shall be deemed to be an offence under the Merchant Shipping Act, 1854.

Legal proceedings in case of offences.

The provisions of the Merchant Shipping Act, 1876, with regard to deck cargoes; those of the Acts of 1876 and 1890, with regard to deck and load lines, and of the Act of 1880, with regard to the stowage of grain; and those relating to the carriage of dangerous goods, have already been noticed.

Protection of Seamen from Imposition and Oppression.

§ 530. The Merchant Shipping (Payment of Wages, &c.) Act, 1880,(*m*) extends to seamen and apprentices the provisions of the Employers and Workmen Act, 1875,(*n*) for the determination of disputes between themselves and their employers. This Act (s. 3) extends the jurisdiction of county courts in the case of such disputes, enabling them to set off cross claims; to rescind contracts; and to take security for the performance of contracts, in lieu of awarding damages for their breach. It also gives to courts of summary jurisdiction a civil jurisdiction over such disputes, similar to that of county courts, but limited in amount to £10.(*o*) The power of rescinding agreements is also expressly given by the Act of 1880.(*m*)

Settlement of disputes between seamen and their employers.

§ 531. The seamen's right of making complaint is protected by the following section of the principal Act: (*p*)

232. If any seaman or apprentice, whilst on board any ship, states to the master that he desires to make complaint to a justice of the peace, or consular officer, or naval officer in command of any of Her Majesty's ships, against the master or any of the crew, the said master shall, if the ship is then at a place where there is a justice or any such officer as aforesaid, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman or apprentice to go ashore or send him ashore in proper custody, so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding ten pounds.

Power of making complaint. Seamen to be allowed to go ashore to complain to a justice.

§ 532. The following enactments are designed for the protection of seamen from fraud and imposition (*q*) when on shore. The principal Act provides:

233. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same; and no power of attorney or

Protection from imposition: Sale of and charge upon wages to be invalid.

(*m*) 43 & 44 Vict. c. 16, s. 8; *supra* § 481.
(*n*) 38 & 39 Vict. c. 90.
(*o*) Ss. 4–7.
(*p*) 17 & 18 Vict. c. 104.
(*q*) See § 485, note (*e*) *supra*.

authority for the receipt of any such wages or salvage shall be irrevocable.

No debt exceeding 5s. recoverable till end of voyage.

234. No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

Penalty for overcharges by lodging-house keepers.

235. If any person demands or receives from any seaman or apprentice to the sea service payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding ten pounds.

Penalty for detaining seamen's effects.

236. If any person receives or takes into his possession or under his control any monies, documents, or effects of any seaman or apprentice to the sea service, and does not return the same or pay the value thereof, when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding ten pounds, and any two justices may, besides inflicting such penalty, by summary order direct the amount or value of such monies, documents, or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

By the Merchant Shipping (Payment of Wages) Act, 1880:(r)

Penalty for being on board ship without permission before seamen leave.

5. Where a ship is about to arrive, is arriving, or has arrived at the end of her voyage, every person not being in Her Majesty's service, or not being duly authorised by law for the purpose, who—

(a) goes on board the ship, without the permission of the master, before the seamen lawfully leave the ship at the end of their engagement, or are discharged (whichever last happens); or,

(b) being on board the ship, remains there after being warned to leave by the master, or by a police officer, or by any officer of the Board of Trade, or of the Customs,

shall for every such offence be liable on summary conviction to a fine not exceeding twenty pounds, or, at the discretion of the court, to imprisonment for any term not exceeding six months: and the master of the ship or any officer of the Board of Trade may take him into custody, and deliver him up forthwith to a constable to be taken before a court or magistrate capable of taking cognizance of the offence, and dealt with according to law.(s)

By the principal Act:

Penalty for solicitations by lodging-house keepers.

238. If within twenty-four hours after the arrival of any ship at any port in the United Kingdom, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the master, he shall for every such offence incur a penalty not exceeding five pounds.

(r) 43 & 44 Vict. c. 16.

(s) This section in effect supersedes the corresponding section (237) of 17 & 18 Vict. c. 104, upon which a somewhat narrow construction was placed in *Attwood* v. *Case*, 1 Q. B. D. 134. Its provisions may be extended, by order in Council, to the ships of foreign countries, which afford similar protection to the seamen of British ships (s. 6). The term "master" includes "every person (except a pilot) having command or charge of any ship." 17 & 18 Vict. c. 104, s. 2.

§ 533. The Merchant Shipping (Fishing-boats) Act, 1883,(*t*) s. 48, empowers sanitary authorities, with the sanction of the President of the Board of Trade, or failing them the President himself, from time to time to make, revoke, and alter bye-laws and regulations relating to seamen's lodging-houses, within their districts and binding on all persons owning, keeping, or employed in such houses, and proceeds:

Seamen's lodging-houses: power to make bye-laws.

Such bye-laws and regulations shall, amongst other things, provide for the licensing of seamen's lodging-houses, the inspection of the same, the sanitary conditions of the same, the publication of the fact of the house being licensed, the due execution of the bye-laws and regulations, and the non-obstruction of persons engaged in securing such execution, the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and the exclusion from licensed houses of persons of improper character, and sufficient penalties for the breach of such bye-laws and regulations, not exceeding in any case the sum of fifty pounds.

Offences under the bye-laws are punishable as offences within the Merchant Shipping Act. The bye-laws are to be published in the *London Gazette* and in one local newspaper to be designated by the President of the Board of Trade. The same section empowers the Queen, by order in Council, to order "that in any seaport town or any part thereof, none but persons duly licensed under" such bye-laws and regulations "shall keep seamen's lodging-houses, or let lodgings to seamen," and an offence against such an order is punishable as an offence under the Merchant Shipping Acts, by a maximum penalty of £100.

(*t*) 46 & 47 Vict. c. 41. Bye-laws under the repealed enactment (43 & 44 Vict. c. 16, s. 9) continue until new ones come into force: *ibid.*

CHAPTER XI.

OFFENCES, AND THE MAINTENANCE OF DISCIPLINE.

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Offences.

Piracy.

§ 534. PIRACY, and other kindred offences, such as collusion with pirates, or attempts to induce master or seaman to turn pirate, are punishable under various old statutes,(*a*) with penal servitude for life, or for any less period, or with imprisonment for a term not exceeding three years. And any one who, with intent to commit, or at the time of committing, the crime of piracy, assaults with intent to murder, or stabs, cuts, or wounds any person, or unlawfully does any act by which the life of such person may be endangered, is guilty of felony punishable with death.(*b*)

§ 535. By the Offences against the Person Act, 1861 : (*c*)

Setting fire to or casting away a ship with intent to murder.

13. Whoever shall set fire to any ship or vessel, or any part thereof, or any part of the tackle, apparel, or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy any ship or vessel, with intent in any of such cases to commit murder, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By the Malicious Damage Act, 1861 : (*d*)

Setting fire to a ship.

42. Whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy, any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be

(*a*) 22 & 23 Car. 2, c. 11 ; 11 & 12 Will. 3, c. 7 ; 7 Will. 4 & 1 Vict. c. 88 ; amended by 54 & 55 Vict. c. 69, s. 1.

(*b*) 7 Will. 4 & 1 Vict. c. 88, s. 2.

(*c*) 24 & 25 Vict. c. 100.

(*d*) 24 & 25 Vict. c. 97.

kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Setting fire to ships to prejudice the owner or underwriters.

43. Whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten, or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Attempting to set fire to a vessel.

44. Whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to, cast away, or destroy any ship or vessel, under such circumstances that, if the ship or vessel were thereby set fire to, cast away, or destroyed, the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Placing gunpowder near a vessel with intent to damage it.

45. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods, or chattels, shall, whether or not any explosion takes place, and whether or not any injury be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Damaging ships otherwise than by fire.

46. Whosoever shall unlawfully and maliciously damage, otherwise than by fire, gunpowder, or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or to render the same useless, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Exhibiting false signals.

§ 536. As to false signals and the like the Act continues:

47. Whosoever shall unlawfully mask, alter, or remove any light or signal, or unlawfully exhibit any false light or signal, with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is hereinbefore provided, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for

life, or for any term not less than three years—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Removing or concealing buoys and other sea marks.

48. Whosoever shall unlawfully and maliciously cut away, cast adrift, remove, alter, deface, sink or destroy, or shall unlawfully and maliciously do any act with intent to cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall in any other manner unlawfully and maliciously injure or conceal any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen for the purpose of navigation, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Destroying wrecks or any articles belonging thereto.

49. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

And by the Merchant Shipping Act, 1854 : (*e*)

414. If any person wilfully or negligently commits any of the following offences: (that is to say)

Penalty for injuring lights, buoys, and beacons.

(1) Injures any lighthouse or the lights exhibited therein, or any buoy or beacon:

(2) Removes, alters, or destroys any light-ship, buoy, or beacon:

(3) Rides by, makes fast to, or runs foul of any light-ship or buoy:

He shall, in addition to the expenses of making good any damage so occasioned, incur a penalty not exceeding fifty pounds.

§ 537. In addition to the numerous statutory penalties to which masters and seamen are subject for infringement of specific sections of statutes, the following general enactments require attention:

By the Merchant Shipping Act, 1854 : (*f*)

Misconduct endangering ship, or life, or limb, a misdemeanor.

239. Any master of, or any seaman or apprentice belonging to any British ship, who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship,(*g*) or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or

(*e*) 17 & 18 Vict. c. 104.

(*f*) 17 & 18 Vict. c. 104. As to the application of the following sections of the Act, see §§ 3, note (*m*), 485, note (*e*), *ante*.

(*g*) It is not necessary that the act done or omitted should be followed by actual loss, destruction, or damage, *R.* v. *Gardner*, 1 F. & F. 669.

limb, shall for every such offence be deemed guilty of a misdemeanour.

* * * * * *

Crimes committed on the High Seas and Abroad.

Offences committed by British seamen at foreign ports to be within Admiralty jurisdiction.

267. All offences against property or person committed in or at any place either ashore or afloat out of her Majesty's dominions by any master, seaman, or apprentice who at the time when the offence is committed is, or within three months previously has been, employed in any British(*h*) ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same Courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

Conveyance of offenders and witnesses to United Kingdom or some British possession.

§ 538. 268. The following rules shall be observed with respect to offences committed on the high seas or abroad: (*i*) (that is to say)

(1) Whenever any complaint is made to any British consular officer of any of the offences mentioned in the last preceding section, or of any offence on the high seas having been committed by any master, seaman, or apprentice belonging to any British ship, such consular officer may inquire into the case upon oath, and may, if the case so requires, take any steps in his power for the purpose of placing the offender under necessary restraint, and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a Court capable of taking cognisance of the offence, in any ship belonging to her Majesty, or to any of her subjects, to be there proceeded against according to law:

(2) For the purpose aforesaid(*k*) such consular officer may order the master of any ship belonging to any subject of her Majesty bound to the United Kingdom or to such British possession as aforesaid, to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that such master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage; and such consular officer shall indorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires;

(3) Every such master shall on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter, and such justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas:

(*h*) Registration is not necessary. *R.* v. *Seberg*, L. R. 1 C. C., 264, and see *R.* v. *Anderson*, L. R. 1 C. C., 161.

(*i*) As to Naval Courts, see s. 263 (6); *ante* § 11.

(*k*) The provisions of sub-sections (2) and (3) are now extended to the case of fugitive offenders, by 44 & 45 Vict. c 69, s. 27.

And any such master as aforesaid who, when required by any British Consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford such passage and subsistence to him, or who does not deliver any offender committed to his charge into the custody of some police officer or constable as hereinbefore directed, shall for each such offence incur a penalty not exceeding fifty pounds.(*l*)

Inquiry into cause of death on board.

269. Whenever any case of death happens on board any foreign-going ship, the [Marine Office superintendent] shall, on the arrival of such ship at the port where the crew is discharged, inquire into the cause of such death, and shall make on the list of the crew delivered to him as herein required an indorsement to the effect either that the statement of the cause of death therein contained is in his opinion true or otherwise, as the result of the inquiry requires; and every such [superintendent] shall, for the purpose of such inquiry, have the powers hereby given to inspectors appointed by the Board of Trade under the first part of this Act; and if in the course of such inquiry it appears to him that any such death as aforesaid has been caused by violence or other improper means, he shall either report the matter to the Board of Trade, or, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice.(*m*)

Depositions to be received in evidence when witness cannot be produced.

270. Whenever in the course of any legal proceedings instituted in any part of her Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding, then upon due proof, if such proceeding is instituted in the United Kingdom, that such witness cannot be found in that Kingdom, or if in any British possession, that he cannot be found in the same possession, any deposition that such witness may have previously made on oath in relation to the same subject-matter before any justice or magistrate in her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence, subject to the following restrictions: (that is to say)

(1) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom:

(2) If such a deposition was made in any British possession, it shall not be admissible in any proceeding instituted in the same British possession:

(3) If the proceeding is criminal, it shall not be admissible unless it was made in the presence of the person accused:

Every deposition so made as aforesaid shall be authenticated by the signature of the judge, magistrate, or consular officer before whom the same is made; and such judge, magistrate or consular officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified; but nothing herein contained shall affect any case in which depositions taken in any proceeding are

(*l*) The expenses of imprisonment of the offender, and conveyance of him and the witnesses to the United Kingdom, or a British possession, are, unless paid as part of the costs of the prosecution, payable out of moneys provided by Parliament, 45 & 46 Vict. c. 55, s. 9.

(*m*) This section is repealed, as to fishing boats, by 46 & 47 Vict. c. 41.

rendered admissible in evidence by any Act of Parliament, or by any Act or ordinance of the Legislature of any colony, so far as regards such colony, or to interfere with the power of any colonial legislature to make such depositions admissible in evidence, or to interfere with the practice of any Court in which depositions not authenticated as hereinbefore mentioned are admissible.

§ 539. By the Merchant Shipping Act Amendment Act, 1855:(*n*)

Jurisdiction in cases of offences on board ship.

21. If any person being a British subject charged with having committed any crime or offence on board any British ship on the high seas or in any foreign port or harbour, or if any person not being a British subject charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any Court of justice in her Majesty's dominions, which would have had cognizance of such crime or offence, if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: Provided that nothing contained in this section shall be construed to alter or interfere with the Act of the thirteenth year of her present Majesty, chapter ninety-six.

And by the Merchant Shipping Act, 1867:(*o*)

Offences by British subjects on board ships.

11. If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any Court of justice in her Majesty's dominions, which would have had cognizance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such Court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid.

Mail Ships Act.

§ 540. The Mail Ships Act, 1891,(*p*) forbids the conveyance of letters in certain cases by master, crew, or passengers, and imposes on the master the duty of securing the observance of the law in this respect, under a penalty in either case of five pounds.

Maintenance of Discipline.

The master's authority.

§ 541. Whilst the ship is afloat it is the duty of the master to provide for the due prosecution of the voyage; for the safety of the ship and cargo; and for the life, health and comfort of all on board; and for these purposes, to maintain strict order and discipline on board. In order to enable him to perform these duties, essential alike to the safety of navigation and the interests of the owners, passengers, and crew, the law invests him with extensive authority over both seamen and passengers.(*q*) He has authority to do all that is necessary for the safety of those on

(*n*) 18 & 19 Vict. c. 91.

(*o*) 30 & 31 Vict. c. 124. This section and part X. of the principal Act (§ 547 *post*) may be extended by O. in C. (under 53 & 54 Vict. c. 37, s. 5) to British Consular Courts in foreign countries. Such orders have accordingly been made, applying to Turkey, Persia, Egypt, and other parts of Africa.

(*p*) 54 & 55 Vict. c. 31, s. 2.

(*q*) See also as to passengers, *post* §§ 585, 586.

board,(r) and may exercise so much force over both seamen and passengers as is necessary for that purpose.(s)

His power to punish seamen.

§ 542. The master may imprison a seaman, or inflict reasonable corporal punishment upon him, for disobedience to reasonable and lawful commands, or for disorderly, riotous or insolent conduct. But the master must be careful that the correction be moderate and commensurate with the offence committed, and not excessive or unjustifiable; or the seaman will be able to recover damages for an assault.(t) And this authority exists, not only whilst the ship is at sea and beyond the reach of assistance, but also whilst she is in a foreign port or river.(u)

Wherever the circumstances will admit of the delay proper for inquiry, due inquiry should precede the act of punishment, and the party charged should be heard in his own defence. But some cases neither require nor admit such a deliberate procedure, as where the necessity occurs of immediately opposing attempted acts of violence by a prompt exercise of lawful force, as in the disorders of a commencing mutiny.(x) In all cases, however, it is the duty of the master to cause a clear statement of the offence, and the inquiry, and of any punishment which may have been inflicted, to be entered on the official log.(y)

§ 543. By the Merchant Shipping Act, 1854:(z)

Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, to be subject to penalties for breach of discipline.

245. Every seafaring person whom the master of any ship is, under the authority of this Act or of any other Act of Parliament, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent, shall, so long as he remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement.

§ 544. With respect to desertion, the Act provides:

Deserters may be sent on board in lieu of being imprisoned.

247. Whenever any seaman or apprentice is brought before any Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner or his agent so requires, cause

(r) *Boyce* v. *Baycliffe*, 1 Camp. 58.

(s) *Aldworth* v. *Stewart*, 14 L. T. 862; *The Lima*, 3 Hagg. 346; *King* v. *Franklin*, 1 F. & F. 360.

(t) Kent's Com. III. 182; *The Agincourt*, 1 Hagg. 271; *The Lowther Castle*, *ibid.*, 384; *Lamb* v. *Burnett*, 1 C. & J. 291; *Aitken* v. *Bedwell*, M. & M. 68.

(u) *Lamb* v. *Burnett*, 1 C. & J. 291. By the Act of 1850, c. 80, 9 U. S. Statutes at Large, 515, flogging in the navy and on board vessels of commerce of the United States was abolished from and after the passing of that Act. The only punishments, which can now be resorted to on ships of the United States, to enforce obedience and good conduct, are forfeiture of wages, irons, confinement on board, imprisonment on shore, and hard labour. Parsons on Shipping, II. 92.

(x) See *per* Lord Stowell, *The Agincourt*, 1 Hagg. 271.

(y) 17 & 18 Vict. c. 104, s. 244; *Murray* v. *Moutrie*, 6 C. & P. 471.

(z) 17 & 18 Vict. c. 104. As to the application of the following sections of the Act, see §§ 3, note (m), 485, note (e), *ante*.

him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

By the Merchant Seamen (Payment of Wages and Rating) Act, 1880 :(*a*)

Desertion and absence without leave.

10. The following provisions shall from the commencement of this Act have operation within the United Kingdom:

A seaman or apprentice to the sea service shall not be liable to imprisonment for deserting or for neglecting or refusing without reasonable cause to join his ship or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of his ship's sailing from any port, or for absence at any time without leave and without sufficient reason from his ship or from his duty.

Whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join or deserts from or refuses to proceed to sea in any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee may, with or without the assistance of the local police officers or constables, who are hereby directed to give the same if required, convey him on board: Provided that if the seaman or apprentice so requires he shall first be taken before some Court capable of taking cognisance of the matters to be dealt with according to law; and that if it appears to the Court before which the case is brought that the seaman or apprentice has been conveyed on board or taken before the Court on improper or insufficient grounds, the master, mate, owner, ship's husband, or consignee, as the case may be, shall incur a penalty not exceeding twenty pounds, but such penalty, if inflicted, shall be a bar to any action for false imprisonment.

If a seaman or apprentice to the sea service intends to absent himself from his ship or his duty, he may give notice of his intention, either to the owner or to the master of the ship, not less than forty-eight hours before the time at which he ought to be on board his ship; and in the event of such notice being given, the Court shall not exercise any of the powers conferred on it by section two hundred and forty-seven of the Merchant Shipping Act, 1854.

Subject to the foregoing provision of this section, the powers conferred by section two hundred and forty-seven of the Merchant Shipping Act, 1854, may be exercised, notwithstanding the abolition of imprisonment for desertion and similar offences, and of apprehension without warrant.

Nothing in this section shall affect section two hundred and thirty-nine of the Merchant Shipping Act, 1854.

§ 545. By the Merchant Shipping Act, 1854 :(*b*)

Penalty for false statement as to last ship or name.

255. If any seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding five pounds; and

(*a*) 43 & 44 Vict. c. 16. (*b*) 17 & 18 Vict. c. 104.

such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Fines to be deducted from wages and paid to [Marine Office superintendent.]

256. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log book, and a copy of such entry shall be furnished, or the same shall be read over to the offender, and an entry of such reading over, and of the reply (if any) made by the offender, shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act; and such fine shall be deducted and paid over as follows: (that is to say) if the offender is discharged in the United Kingdom, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going ship to the satisfaction of the [Marine Office superintendent] before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the [superintendent] at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such [superintendent]; and if before the final discharge of the crew in the United Kingdom any such offender as aforesaid enters into any of Her Majesty's ships, or is discharged abroad, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log book (if any) and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships, to the [superintendent] before whom the crew is discharged, and in the case of home trade ships to the [superintendent] at or nearest to the place at which the crew is discharged; and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this Act.

Penalty for enticing to desert, and harbouring deserters.

§ 546. 257. Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or to proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding ten pounds; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship, or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted incur a penalty not exceeding twenty pounds.(c)

(c) The sections of the Act relating to discipline do not apply to foreign ships, *Leary* v. *Lloyd*, 3 E. & E. 178. They may, however, be so extended at the desire of the foreign State, by order in Council, under 39 & 40 Vict. c. 80, s. 37. See *ante* § 3. As to the offences aimed at in this section, see also 24 & 25 Vict. c. 100, s. 40; 38 & 39 Vict. c. 86, s. 7; and *Kennedy* v. *Cowie*, (1891) 1 Q. B. 771.

258. Any person who secretes himself and goes to sea in any ship without the consent of either the owner, consignee, or master, or of a mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding twenty pounds, or be liable to imprisonment with or without hard labour for any period not exceeding four weeks.(*d*)

Penalty for obtaining passage surreptitiously.

Legal Procedure.(*e*)

§ 547. Part X. of the principal Act prescribes as follows:

518. In all places within her Majesty's dominions, except Scotland,(*f*) the offences hereinafter mentioned shall be punished and penalties recovered in manner following: (that is to say)

Punishment of offences, and recovery of penalties.

(1) Every offence by this Act declared to be a misdemeanor shall be punishable by fine or imprisonment with or without hard labour, and the Court before which such offence is tried may in England make the same allowances and order payment of the same costs and expenses as if such misdemeanor had been enumerated in the Act passed in the seventh year of his late Majesty King George the Fourth, chapter sixty-four, or any other Act that may be passed for the like purpose, and may in any other part of her Majesty's dominions make such allowances and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanor under any existing Act or ordinance, or as may be payable or allowable under any Act or law for the time being in force therein:

(2) Every offence declared by this Act to be a misdemeanor shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary(*g*) manner, instead of being prosecuted as a misdemeanor:(*h*)

(3) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding one hundred pounds, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by the Act of the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, and as to Ireland in the manner directed by the Act of the 14th and 15th years of the reign of her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes: And all pro-

(*d*) As to passenger ships, see also 18 & 19 Vict. c. 119, s. 18, *post* § 605.

(*e*) By s. 517, the tenth part of the Act, dealing with legal procedure, applies, where no particular country is mentioned, to the whole of Her Majesty's dominions. As to its extension to Consular Courts abroad, see *ante* § 539, note (*o*). As to summary procedure for recovery of penalties under the Passengers Acts, see 18 & 19 Vict. c. 119, ss. 84–94, *post* § 622.

(*f*) The procedure in Scotland is dealt with in secs. 530–543 of the Act.

(*g*) As to the limitation of time in summary proceedings, see s. 525, *ante* § 516, and *post* § 549.

(*h*) This sub-section does not apply to offences under 39 & 40 Vict. c. 80, s. 4, *ante* § 529.

visions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order:

(4) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the next Court of general or quarter sessions.(*i*)

(5) All offences under this Act shall in any British possession be punishable in any Court or by any justice of the peace or magistrate in which or by whom offences of a like character are ordinarily punishable, or in such other manner, or by such other Courts, justices, or magistrates, as may from time to time be determined by any Act or ordinance duly made in such possession in such manner as Acts and ordinances in such possession are required to be made in order to have the force of law.

Stipendiary magistrate to have same power as two justices.

519. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this Act authorised to do.(*k*)

Offence where deemed to have been committed.

§ 548. 520. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Jurisdiction over ships lying off the coasts.

521. In all cases where any district within which any Court or justice of the peace or other magistrate has jurisdiction, either under this Act or under any other Act or at Common Law, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such Court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such Court, justice, or magistrate.(*l*)

Service to be good if made personally or on board ship.

522. Service of any summons or other matter in any legal proceeding under this Act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship.

Sums ordered to be paid leviable by distress on ship.

523. In all cases where any Court, justice, or justices of the peace, or other magistrate, has or have power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the Court, justice, or justices, or other magistrate, who made the order, may, in addition to any other powers they

(*i*) This sub-section is printed as amended by 47 & 48 Vict. c. 43, s. 4.

(*k*) By 18 & 19 Vict. c. 91, s. 18, a similar power is conferred on Naval Courts in respect of offences against the Act of 1854 committed abroad. See *ante* § 12.

(*l*) See also 18 & 19 Vict. c. 91, s. 21; 30 & 31 Vict. c. 124, s. 11, *ante* § 539, and 41 & 42 Vict. c. 73.

or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the said ship, her tackle, furniture, and apparel.

Application of penalties.

524. Any Court, justice or magistrate imposing any penalty under this Act, for which no specific application is herein provided, may, if it or he thinks fit, direct the whole or part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of her Majesty's exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

Limitation of time in summary proceedings.

§ 549. 525. The time for instituting summary proceedings under this Act shall be limited as follows: (that is to say)

(1) No conviction for any offence shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding (*m*) happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive or to be at one time within the same:

(2) No conviction for any offence shall be made under this Act in any proceeding instituted in any British possession, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any Court capable of dealing with the case, unless the same is commenced within two months after they both first happen to arrive or to be at one time within such jurisdiction: (*n*)

* * * * * *

And no provision contained in any other Act or Acts, ordinance or ordinances, for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this Act.

Document proved without calling attesting witness.

526. Any document required by this Act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses or any of them.

(*m*) As to who are "the parties to the proceeding" under section 257 (*ante* § 546), see *Austin* v. *Olsen*, L. R. 3 Q. B. 208.

(*n*) The remaining sub-sections deal with the limitation of time in summary proceedings for the recovery of money, as to which see *ante* § 516.

CHAPTER XII.

PILOTS.

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Pilotage Authorities, their Powers and Duties.

Origin of pilots.

§ 550. PILOTS were originally incorporated by royal charter with a variety of privileges, at different parts of the coasts and rivers of the United Kingdom ; and Acts of Parliament were passed from time to time rendering the employment of licensed pilots, within certain districts, compulsory on outward and homeward bound ships engaged in foreign trade.(*a*) Various Acts of Parliament are in force at different ports, and bye-laws have been made under their authority, defining the duties, remuneration, and privileges of the pilots subject to the local pilotage authorities.

The existing powers and jurisdiction of these pilotage authorities have been confirmed by the Merchant Shipping Act, 1854, so far as they are not inconsistent with its provisions, and the obligation to employ a qualified pilot has been thereby extended to home-trade passenger ships.

Pilotage authorities.

§ 551. The general powers and duties of pilotage authorities in the United Kingdom are regulated by the following sections of statutes :

(*a*) The general statutes formerly in force with regard to pilotage were the 52 Geo. III. c. 39 ; 6 Geo. IV. c. 125 ; 16 & 17 Vict. c. 129. *Law* v. *Hollingsworth*, 7 T. R. 160.

(1) *The Merchant Shipping Act*, 1854.(*b*)

Pilotage.

"Pilotage authority" shall include all bodies and persons authorised to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage:

"Pilot" shall mean any person not belonging to a ship who has the conduct thereof:

"Qualified pilot" shall mean any person duly licensed by any pilotage authority to conduct ships to which he does not belong.(*c*)

The fifth part of the Act, containing the sections relating to pilotage, applies to the United Kingdom only.

General jurisdiction of pilotage authorities.

331. Every pilotage authority shall retain all powers and jurisdiction which it now lawfully possesses, so far as the same are consistent with the provisions of this Act; but no law relating to such authority, or to the pilots licensed by it, and no Act done by such authority, shall, if inconsistent with any provision of this Act, be of any force whatever.

Power of pilotage authorities to make and extend exemptions from compulsory pilotage.

332. Every pilotage authority shall have power, by bye-law made with the consent of Her Majesty in Council, to exempt the masters of any ships,(*d*) or of any classes of ships, from being compelled to employ qualified pilots, and to annex any terms or conditions to such exemptions, and to revise and extend any exemptions now existing by virtue of this Act or any other Act of Parliament, law, or charter, or by usage, upon such terms and conditions and in such manner as may appear desirable to such authority.

Powers of pilotage authorities.

333. Subject to the provisions contained in the fifth part of this Act, it shall be lawful for every pilotage authority, by bye-law made with the consent of Her Majesty in Council, from time to time to do all or any of the following things within its district: (that is to say) (*e*)

To determine qualifications of pilots:

(1) To determine the qualifications to be required from persons applying to be licensed as pilots, whether in respect of their age, skill, time of service, character or otherwise:

To make regulations as to pilot boats:

(2) To make regulations as to the approval and licensing of pilot boats and ships, with power to establish and regulate companies for the support of such boats and ships, and for a participation in the profits made thereby; the companies so established to be exempt from the provisions of the Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and ten, intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies:"

To make regulations for the government of pilots:

(3) To make regulations for the government of the pilots licensed by them, and for insuring their good conduct, and their constant attendance to and effectual performance of their duty, either at sea or on shore:

To make regulations as to licences and certificates:

(4) To fix the terms and conditions of granting licences to pilots and apprentices, and of granting such pilotage certificates as hereinafter mentioned to masters and mates, and to make regulations for punishing any breach of such regulations as aforesaid committed by such pilots (*f*) or apprentices, or by such masters and mates, by the withdrawal or suspension of their licences or certificates, as the case may be, or by the infliction

(*b*) 17 & 18 Vict. c. 104.

(*c*) See *The Carl XV.* (1892) P. 132, 324.

(*d*) "Ship" includes a foreign ship. See 52 & 53 Vict. c. 68, s. 1 *post*, § 555.

(*e*) As to the Trinity House, see Appx. No. 11 (A) (B) (C) (D) (E) (F) (G).

(*f*) As to appeals from pilotage authorities, see 52 & 53 Vict c. 68, s. 4 *post*, § 555.

of penalties to be recoverable summarily before two justices, so that no such penalty be made to exceed the sum of twenty pounds, and so that every such penalty be capable of reduction at the discretion of the justices by whom the same is inflicted:

To alter and reduce rates of pilotage:

(5) To fix the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority, or to alter the mode of remunerating such pilots, in such manner as such authority may, with such consent as aforesaid, think fit, so that no higher rates or prices be demanded or received from the masters or owners of ships in the case of the Trinity House than the rates and prices specified in the table marked U in the schedule hereto,(*g*) and in the case of all other pilotage authorities, than the rates and prices which might have been lawfully fixed or demanded by such pilotage authorities respectively under any Act of Parliament, charter, or custom in force immediately before the commencement of this Act:

To arrange the limits of pilotage districts:

(6) To make such arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority or the privileges of the pilots licensed by such other authority or any of them to all or any part of its own district, or for limiting its own powers or the privileges of its own pilots or any of them, or for sharing the said last-mentioned powers and privileges with the said other authority and the pilots licensed by it, or for delegating or surrendering such powers and privileges or any of them to any other pilotage authority either already constituted or to be constituted by agreement between such authorities, and to the pilots licensed by it, as may appear to such pilotage authorities to be desirable for the purpose of facilitating navigation or of reducing charges on shipping:

To establish funds for superannuated pilots:

(7) To establish, either alone or in conjunction with any other pilotage authority, or authorities, funds for the relief of superannuated or infirm qualified pilots, or of their wives, widows, or children, or to make any new regulations with respect to any funds (*h*) already applicable to the above purposes or any of them, with power to determine the amount, manner, time, and persons (*i*) (such persons to be in the service of such pilotage authority) to and in which and by and upon whom the contributions in support of such existing or future funds may be made or levied; and further, to declare the persons or class of persons (such persons or class of persons being confined to men in the service of such pilotage authority, their wives, widows, or children,) entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled:

To alter bye-laws.

(8) To repeal or alter any bye-law made in exercise of the above powers, and to make a new bye-law or new bye-laws in lieu thereof:

And every bye-law duly made by any pilotage authority in exercise of the powers hereby given to it shall be valid and effectual, notwithstanding any Act of Parliament, rule, law, or custom to the contrary.

(*g*) For the pilotage rates now chargeable by the Trinity House, see Appx. No. 12.

(*h*) See 52 & 53 Vict. c. 68, s. 4 *post*, § 555.

(*i*) Masters or mates holding pilotage certificates may be required to contribute. See 52 & 53 Vict. c. 68, s. 7 *post*, § 555.

334. Every bye-law proposed to be enacted by any pilotage authority in pursuance of the foregoing powers shall, before it is submitted to Her Majesty in Council for her assent, be published in such manner as may from time to time be prescribed by the Board of Trade.

Publication of bye-laws.

335. Every order in Council made in pursuance of the provisions hereinbefore contained shall be laid before both Houses of Parliament as soon as possible after the making thereof.

Bye-laws to be laid before Parliament.

336. If the greater part in number of the qualified pilots belonging to any port, or the local Marine Board, where there is one, or, at any port where there is no local Marine Board, if any masters, owners, or insurers of ships, being not less than six in number, consider themselves aggrieved by any regulation or bye-law in force when this Act comes into operation or hereafter made under some authority other than the provisions of this Act, or by any defect or omission therein, they may appeal to the Board of Trade, and the said Board may thereupon revoke or alter any such regulation or bye-law, or may make additions thereto, in such manner as, having regard to the interests of the persons concerned, may appear to be just and expedient; and every order so made shall be conclusive in the matter.

Power of appeal to Board of Trade.

§ 552. 337. Every pilotage authority shall deliver periodically to the Board of Trade, in such form and at such times as such Board requires, returns of the following particulars with regard to pilotage within the port or district under the jurisdiction of such authority: (that is to say)

Pilotage authorities to make full returns to the Board of Trade of certain particulars connected with pilotage.

(1) All bye-laws, regulations, orders, or ordinances relating to pilots or pilotage for the time being in force:

(2) The names and ages of all pilots or apprentices licensed or authorized to act by such authority, and of all pilots or apprentices acting either mediately or immediately under such authority, whether so licensed or authorised or not:

(3) The service for which each pilot or apprentice is licensed:

(4) The rates of pilotage for the time being in force, including therein the rates and descriptions of all charges upon shipping made for or in respect of pilots or pilotage:

(5) The total amount received for pilotage, distinguishing the several amounts received from British ships and from foreign ships respectively, and the several amounts received in respect of different classes of ships paying different rates of pilotage, according to the scale of such rates for the time being in force, and the several amounts received for the several classes of service rendered by pilots; and also the amount paid by such ships (if any) as have before reaching the outer limits of pilotage water if outward-bound, or their port of destination if inward bound, to take or pay for two or more pilots, whether licensed by the same or by different pilotage authorities; together with the numbers of the ships of each of the several classes paying such several amounts as aforesaid:

(6) The receipt and expenditure of all moneys received by or on behalf of such authority, or by or on behalf of any sub-commissioners appointed by them, in respect of pilots or pilotage: (*k*)

And shall allow the Board of Trade, or any persons appointed by such Board for the purpose, to inspect any books or documents in its

(*k*) By 52 & 53 Vict. c. 68, s. 6, this return must include separate accounts of the receipts and expenditure in respect of any pension or superannuation funds administered by or under the control of the pilotage authority. See *post* § 555.

possession relating to the several matters hereinbefore required to be returned to the Board of Trade.

If local authorities fail to give the required returns, their jurisdiction may be transferred to the Trinity House.

338. If any of such pilotage authorities as aforesaid (other than the Trinity House, or sub-commissioners of pilotage appointed by it, as hereinafter mentioned) fail to deliver to the Board of Trade the periodical returns hereinbefore required within one year of such time as may be fixed by such Board for the purpose, or if any of such authorities do not allow the said Board, or any persons who may be appointed by it for the purpose, to inspect any books or documents in their possession relating to the matters hereinbefore required to be returned by them, it shall be lawful for Her Majesty, by and with the advice of Her Privy Council, to direct that all the rights and powers of such authorities in respect of pilotage shall cease or be suspended during such time as Her Majesty directs; and thereupon the Trinity House shall thereafter, or during such time as such suspension may continue, have and exercise the same powers of appointing sub-commissioners of pilotage, and of licensing pilots, and of establishing and altering rates of pilotage, within the district within which the authority so making default has previously appointed or licensed pilots, as it is by this Act authorised to exercise in any district for which no particular provision is made by any Act of Parliament or charter for the appointment of pilots, and shall also during such time as aforesaid have and exercise the same rights, title, and powers to and in respect of any pilotage funds or other pilotage property which the said pilotage authorities would or might have had or exercised if not so suspended as aforesaid.

Returns to be laid before Parliament.

339. The Board of Trade shall without delay cause the several returns hereinbefore required to be made to such Board to be laid before both Houses of Parliament. (*l*)

(2) *The Merchant Shipping Act Amendment Act*, 1862.

Power by provisional order: To transfer pilotage jurisdiction.

§ 553. 39. It shall be lawful for the Board of Trade, by provisional order, to do the following things: (that is to say)

(1) Whenever any pilotage authority residing or having its place of business at one port has or exercises jurisdiction in matters of pilotage in any other port, to transfer so much of the said jurisdiction as concerns such last-mentioned port to any harbour trust or other body exercising any local jurisdiction in maritime matters at the last-mentioned port or to any body to be constituted for the purpose by the provisional order, or, in cases where the said pilotage authority is not the Trinity House of Deptford Strond, to the said Trinity House; or to transfer the whole or any part of the jurisdiction of the said pilotage authority to a new body corporate or body of persons to be constituted for the purpose by the provisional order, so as to represent the interests of the several ports concerned:

And to make consequent arrangements.

(2) To make the body corporate or persons to whom the said transfer is made a pilotage authority within the meaning of the principal Act, with such powers for the purpose as may be in the provisional order in that behalf mentioned:

To determine the limits of the district of the pilotage authority to which the transfer of jurisdiction is made:

To sanction a scale of pilotage rates to be taken by the pilots to be licensed by the last-mentioned pilotage authority:

(*l*) 25 & 26 Vict. c. 63.

To determine to what extent and under what conditions any pilots already licensed by the former pilotage authority shall continue to act under the new pilotage authority:

To sanction arrangements for the apportionment of any pilotage funds belonging to the pilots licensed by the former pilotage authority between the pilots remaining under the jurisdiction of that authority and the pilots who are transferred to the jurisdiction of the new authority:

To provide for such compensation or superannuation as may be just to officers employed by the former pilotage authority and not continued by the new authority:

(3) To constitute a pilotage authority and to fix the limits of its district in any place in the United Kingdom where there is no such authority; so, however, that in the new pilotage districts so constituted there shall be no compulsory pilotage, and no restriction on the power of duly qualified persons to obtain licences as pilots: *To constitute new authorities.*

(4) To exempt the masters and owners of all ships, or of any classes of ships, from being obliged to employ pilots in any pilotage district or in any part of any pilotage district, or from being obliged to pay for pilots when not employing them in any district or in any part of any pilotage district, and to annex any terms and conditions to such exemptions: *To exempt from compulsory pilotage in any district.*

(5) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to license pilots and fix pilotage rates for any part of the district within the jurisdiction of such authority for which no such licences or rates now exist: *To enable existing authorities to grant licences and fix rates.*

(6) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to raise all or any of the pilotage rates now in force in the district or any part of the district within the jurisdiction of such authority: *To raise rates.*

(7) In cases where the pilotage is not compulsory, and where there is no restriction on the number of pilots, or on the power of duly qualified persons to obtain licences as pilots, to give additional facilities for the recovery of pilotage rates and for the prevention of the employment of unqualified pilots. *To facilitate recovery of rates in certain cases.*

(8) To give facilities for enabling duly qualified persons, after proper examination as to their qualifications, to obtain licences as pilots. *To facilitate grants of licences.*

41. The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts, shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries. *Extension of exemptions from compulsory pilotage.*

(3) *The Merchant Shipping Act*, 1872.(*m*)

§ 554. 11. Any pilotage authority may, if authorised in that behalf

(*m*) 35 & 36 Vict. c. 73.

Pilotage authority may grant special sea licences.

by order in Council, grant special licences qualifying the persons to whom they are granted to act as pilots for any part of the sea or channels beyond the limits of any pilotage authority, so, however, that no pilot so licensed be entitled to supersede an unlicensed pilot outside the limits of the authority by which he is licensed.

(4) *The Merchant Shipping (Pilotage) Act*, 1889.(*n*)

Removal of doubts as to application of pilotage provisions of 17 & 18 Vict. c. 104, to foreign ships.

§ 555. 1. In the construction of Part Five of the Merchant Shipping Act, 1854, and of the enactments amending the same, the expression "ship" includes a foreign ship.

Provisional orders as to pilotage authorities and districts.

2. (1) The Board of Trade may from time to time by provisional order—

(*a*) make provision or further provision for the direct representation of pilots and, if it seems expedient, also of shipowners, on the pilotage authority of any district, or if there is a pilotage committee of that authority, or any body of commissioners or sub-commissioners appointed by that authority, then on that committee or body; and

(*b*) extend the limits of any pilotage district by including therein any area in the United Kingdom in which there is no pilotage authority, so, however, that in the area so included there shall be no compulsory pilotage and no restriction on the power of duly qualified persons to obtain licences as pilots.

25 & 26 Vict. c. 63.

(2) The provisions of section forty of the Merchant Shipping Act Amendment Act, 1862, shall apply in the case of any provisional order made in pursuance of this section.

Disciplinary powers of committee, commissioners, sub-commissioners, &c.

3. Where in pursuance of this Act provision has been made for the representation of pilots on the pilotage committee or commissioners or sub-commissioners for any pilotage district, the committee, commissioners, or sub-commissioners shall have power to suspend or dismiss, or to suspend or revoke the certificate of, any pilot licensed for that district who is guilty of any offence under section three hundred and sixty-five, or section three hundred and sixty-six, or section three hundred and sixty-seven of the Merchant Shipping Act, 1854.

Appeals from pilotage authorities.

4. (1) If a pilot is aggrieved by the decision of a pilotage authority or a pilotage committee, or of any commissioners or sub-commissioners for a pilotage district, with respect to his suspension or dismissal, or the suspension or revocation of his licence, or the imposition of a fine exceeding two pounds, or the application of any pilotage fund to which he has contributed, prejudicing his rights in respect of the fund, he may appeal therefrom either to a judge of county courts having jurisdiction within the port for which the pilot is licensed, or to a metropolitan police or stipendiary magistrate having jurisdiction within that port.

(2) For the purpose of hearing the appeal, the judge or magistrate shall sit with an assessor of nautical and pilotage experience.

(3) The assessor shall be selected and summoned by the judge or magistrate, but where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by either party to the appeal: Provided that in the case of a pilot licensed by the Trinity House for any district on the coast of England or Wales, the assessor shall be selected from the Brethren of the Trinity House.

(4) The judge or magistrate may either confirm or reverse the decision of the pilotage authority, or modify the same, by increasing or

(*n*) 52 & 53 Vict. c. 68. For the application of this Act to Scotland and Ireland, see ss. 12 and 13.

decreasing any penalty or otherwise, as may seem just, and his decision shall be final.

(5) The costs incurred by a pilotage authority under this section shall be payable out of any fund applicable to the general expenses of the pilotage authority.

(6) Rules with respect to the procedure under this section (including costs and the remuneration of assessors) may from time to time be made, as respects judges of county courts, by the authority having power to make rules of practice under the County Courts Act, 1888, and as respects metropolitan police and stipendiary magistrates by one of Her Majesty's Principal Secretaries of State, but in either case with the concurrence of the Commissioners of Her Majesty's Treasury as to fees.

Returns as to pension fund.

6. The returns required by section three hundred and thirty-seven of the Merchant Shipping Act, 1854,(*nn*) to be made by a pilotage authority to the Board of Trade, shall include separate accounts of the receipts and expenditure in respect of any pension or superannuation funds administered by or under the control of the pilotage authority.

Bye-laws as to contributions to pilotage funds.

7. The powers of making bye-laws conferred on a pilotage authority by section three hundred and thirty-three of the Merchant Shipping Act, 1854, shall extend to making bye-laws requiring masters or mates who hold pilotage certificates granted in pursuance of section three hundred and forty or section three hundred and forty-two of that Act to contribute towards the pilotage fund of the district, and requiring that a periodical return of the pilotage services rendered by such masters or mates be made by them to the pilotage authority: Provided that the contribution of a master or mate under this section shall not exceed such proportion of the pilotage dues which would have been payable in respect of his ship if he had not held a pilotage certificate, as may be from time to time fixed by the Board of Trade.

Pilot Boats and Pilot Licences.

Licensing of masters and mates.

§ 556. Provision is made in the Merchant Shipping Acts for the licensing of masters and mates as qualified pilots for particular ships. The enactments governing this matter have already been detailed in §§ 33–35.

Pilot boats.

§ 557. The regulations for the licensing and the distinguishing characteristics of pilot boats are prescribed in the following sections of the Merchant Shipping Act, 1854 :(*o*)

Pilot boats, how to be provided.

345. All boats and ships regularly employed in the pilotage service of any district shall be approved and licensed by the pilotage authority of such district, who may, at their discretion, appoint and remove the masters of such boats and ships.

Characteristics of pilot boats.

346. Every pilot boat or ship shall be distinguished by the following characteristics: (that is to say)

(1) A black colour painted or tarred outside, with the exception of such names and numbers as are hereinafter mentioned; or such other distinguishing colour or colours as the pilotage authority of the district, with the consent of the Board of Trade, directs:

(2) On her stern the name of the owner thereof and the port to which she belongs painted in white letters at least one inch broad and three inches long, and on each bow the number of the licence of such boat or ship:

(*nn*) *Ante*, § 552. (*o*) 17 & 18 Vict. c. 104.

(3) When afloat, a flag at the mast-head or on a sprit or staff, or in some other equally conspicuous situation; such flag to be of large dimensions compared with the size of the boat or ship carrying the same, and to be of two colours, the upper horizontal half white, and the lower horizontal half red:

And it shall be the duty of the master of such boat or ship to attend to the following particulars: first, that the boat or ship possesses all the above characteristics; secondly, that the aforesaid flag is kept clean and distinct, so as to be easily discerned at a proper distance; and, lastly, that the names and numbers before mentioned are not at any time concealed; and if default is made in any of the above particulars he shall incur a penalty not exceeding twenty pounds for each default.

Qualified pilot to display flag though not in pilot boat.

347. Whenever any qualified pilot is carried off in a boat or ship not in the pilotage service he shall exhibit a flag of the above description, in order to show that such boat or ship has a qualified pilot on board; and if he fails to do so, without reasonable cause, he shall incur a penalty not exceeding fifty pounds.

Penalty on ordinary boats displaying pilot flag.

348. If any boat or ship, not having a licensed pilot on board, displays a flag of the above-mentioned description, there shall be incurred for every such offence a penalty not exceeding fifty pounds, to be recovered from the owner or from the master of such boat or ship.

And by the Merchant Shipping (Pilotage) Act, 1889:(*p*)

Flag to be displayed where master or mate has pilotage certificate.

9. (1) Where the master or mate of a ship holds a pilotage certificate granted under section three hundred and forty or three hundred and forty-two of the Merchant Shipping Act, 1854, the ship shall, so long as he is on board, and as the ship is within a district in which pilotage is compulsory, display a flag of the description mentioned in section three hundred and forty-six of the same Act, and, if default is made in complying with this section, the master of the ship shall incur a penalty not exceeding twenty pounds.

(2) The holder of such a pilotage certificate shall be deemed to be a licensed pilot within the meaning of section three hundred and forty-eight of the Merchant Shipping Act, 1854.

Penalty on ordinary boat displaying colourable imitation of pilot flag.

10. If any boat or ship, not having on board a licensed pilot or a master or mate holding a pilotage certificate granted in pursuance of section three hundred and forty or section three hundred and forty-two of the Merchant Shipping Act, 1854, displays a flag so nearly resembling a flag of the description mentioned in section three hundred and forty-six of that Act, as to be likely to deceive, there shall be incurred for every such offence a penalty not exceeding fifty pounds, to be recovered from the owner or from the master of the boat or ship, unless he proves that he had no intention to deceive.

Pilot licences.

§ 558. As regards pilot licences the following sections of the Merchant Shipping Act, 1854,(*q*) have effect:

Registry of pilot licence.

349. Every qualified pilot on his appointment shall receive a licence containing his name and usual place of abode, together with a description of his person, and a specification of the limits within which he is qualified to act: and it shall be the duty of the principal officer of customs at the place at or nearest to which any qualified pilot may reside, upon his request, to register his licence; and no qualified pilot shall be entitled to act as such until his licence is so registered; and any qualified pilot acting beyond the limits for which he is qualified by his licence shall be considered as an unqualified pilot.

(*p*) 52 & 53 Vict. c. 68. (*q*) 17 & 18 Vict. c. 104.

350. Every qualified pilot shall, upon receiving his licence, be furnished with a copy of such part of this Act as relates to pilotage, together with a copy of the rates, bye-laws, and regulations established within the district for which he is licensed; and he shall produce such copies to the master of any ship, or other person employing him, when required to do so, under a penalty in case of default not exceeding five pounds.

Copies of regulations to be furnished to qualified pilot, and to be produced by him.

351. Every qualified pilot, while acting in that capacity, shall be provided with his licence, and produce the same to every person by whom he is employed, or to whom he tenders his services as pilot; and if he refuses to do so at the request of such person, he shall incur for each offence a penalty not exceeding ten pounds, and shall be subject to suspension or dismissal by the pilotage authority by whom he is licensed.

Qualified pilot to produce licence to employer.

352. Every qualified pilot, when required by the pilotage authority who appointed him, shall produce or deliver up his licence; and on the death of any qualified pilot the person into whose hands his licence happens to fall shall without delay transmit the same to the pilotage authority who appointed the deceased pilot; and any pilot or person failing to comply with the provisions of this section shall incur a penalty not exceeding ten pounds.(*r*)

Licences to be delivered up, when required, and returned on death.

§ 559. The signals to be used and displayed by vessels requiring the services of a pilot, are prescribed by the Merchant Shipping Act, 1873,(*s*) Schedule II., as follows:

Signals for pilots.

SIGNALS TO BE MADE BY SHIPS WANTING A PILOT.

In the daytime.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot in the daytime, viz.:—

1. To be hoisted at the fore, the Jack or other national colour usually worn by merchant ships, having round it a white border, one-fifth of the breadth of the flag; or
2. The International Code pilotage signal indicated by P T.

At night.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot at night, viz.:—

1. The pyrotechnic light commonly known as a blue light every fifteen minutes; or
2. A bright white light, flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time.

With regard to the penaltyfor an infraction of these rules the same Act provides:

19. Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals for any other purpose than that of summoning a pilot, or uses or causes or permits any person under his authority to use any other signal for a pilot, shall incur a penalty not exceeding twenty pounds.(*t*)

(*r*) A qualified pilot refusing to deliver up his licence, when required to do so by the pilotage authority, is liable to a penalty, and it is no excuse or defence that the pilotage authority has acted capriciously in requiring the delivery. *Henry* v. *Newcastle Trinity House Board*, 8 E. & B. 723. As to appeals by pilots, see 52 & 53 Vict. c. 68, s. 4, *ante* § 555.

(*s*) 36 & 37 Vict. c. 85.

(*t*) S. 21 enables a shipowner to register a private code of signals with the Board of Trade, and exempts from penalties the use thereof by any one acting under the authority of the shipowner.

In addition to the penalty contained in s. 19 of the Act, the master who attempts to summon a pilot by any of the signals prescribed for a vessel in distress, may make himself liable to pay compensation to those misled, as we shall see when dealing with salvage in § 700.

The Master's Duty to Employ a Pilot.

The master's duty to employ a pilot.

§ 560. Where, either by usage or by the laws of the country within which the ship is, a pilot is required, it is a duty, which the master owes to his owners, to the shippers, and to the insurers, to take one on board.(*u*)

When the neglect to employ a pilot avoids the policy.

In every voyage policy of insurance there is an implied warranty that the ship shall be seaworthy when the risk attaches ;(*x*) and we have seen in § 103 that it is the consequent duty of the master on sailing from port, to employ a pilot, where law, usage, or the nature of the navigation requires one. Otherwise the insured will be deprived of any recourse against the insurers, whether the loss can be traced to such breach of the warranty or not.(*y*)

And so, if in the course of a voyage the master arrive at a port or place where a pilot is necessary, and take one on board, he ought not to dismiss him before the necessity has ceased, or he may, according to the opinion of some eminent authorities, discharge the underwriters.(*z*)

As the law governing the master's duty to employ a pilot, so far as regards the seaworthiness of the ship, has already been discussed in § 103, it will be unnecessary to add here anything further on this point.

What will excuse the master not employing a pilot.

§ 561. When the master is in such a situation that he cannot obtain a licensed pilot without a delay which would be attended with great and imminent danger, he must exercise his judgment and do the best he can, either by engaging the best assistance that offers, or by employing the best skill that the ship carries, and in such case the insurers are not discharged if the ship is lost.(*a*)

And if a vessel sail to a port where the establishment is

(*u*) *The William*, 6 C. Rob. 316 ; per Lord Kenyon, *Law* v. *Hollingsworth*, 7 T. R. 160 ; *Phillips* v. *Headlam*, 2 B. & Ad. 380 ; *Dixon* v. *Sadler*, 5 M. & W. 405 ; *Sadler* v. *Dixon*, 8 M. & W. 895.

(*x*) Per Parke, B., *Dixon* v. *Sadler*, 5 M. & W, 405; *Quebec Mar. &c., Co.* v. *The Commercial, &c.*, L. R. 3 P. C. 234.

(*y*) *Dixon* v. *Sadler*, 5 M. & W. 405 ; Arnould, by Macl. 589 ; per Parke, B., *Phillips* v. *Headlam*, 2 B. & Ad. 380 ; per Lord Kenyon, *Law* v. *Hollingsworth*, 7 T. R. 160 ; *Quebec Mar., &c., Co.* v. *The Commercial, &c.*, L. R. 3 P. C. 234.

(*z*) Lord Kenyon, C.J., in *Law* v. *Hollingsworth*, 7 T. R. 160 ; Parke, J., in *Phillips* v. *Headlam*, 2 B. & Ad. 380. But see the remarks of Tindal, C.J., on this case in *Sadler* v. *Dixon*, 8 M. & W. 895, *supra* § 103 n.

(*a*) *R.* v. *Neale*, 8 T. R. 241 ; *Phillips* v. *Headlam*, 2 B. & Ad. 380. An unqualified pilot may lawfully accept employment in such a case, 17 & 18 Vict. c. 104, s. 362.

such that it is not always possible to procure the assistance of a pilot before the vessel enters into the difficult part of the navigation, then, as the law compels no one to perform impossibilities, all that it can require in such a case is, that the master shall use all reasonable efforts to obtain one.(*b*)

When the neglect to employ a pilot will avoid the policy.

If therefore, on arriving off a port, the master uses due diligence to obtain a pilot, but cannot obtain one, and then does what a prudent master ought to do under the circumstances, the insurers would not be discharged if the ship were lost by any of the perils insured against.(*b*)

Thus a ship insured at and from Liverpool to Sierra Leone arrived off the river Sierra Leone, where there was a regular establishment of pilots, about three o'clock in the evening. The captain hoisted a signal for a pilot; but no pilot having come on board, about ten o'clock at night he attempted to enter the river without one, and in so doing the ship took the ground and was lost by perils of the seas. The judge left it to the jury whether the captain, in entering without a pilot, did what a prudent man ought to have done under the circumstances. The jury were of opinion that he did, and found for the plaintiff. It was held that the underwriters were liable, and would have been so although the captain had been wrong in attempting to enter the port without a pilot, he being a person of competent skill, having used reasonable diligence to obtain a pilot, and having exercised his discretion *bonâ fide* under the circumstances.(*b*)

If the master, in the belief and on the representation of the pilot that he is properly qualified, take such pilot on board, and the pilot proves notwithstanding to be disqualified and a loss ensues by the perils insured against, it seems on principle that the underwriters would be liable, if the master was originally competent and if he acted to the best of his judgment.(*c*)

Compulsory Pilotage.

Pilotage where compulsory.

§ 562. A vast number of statutes, orders and bye-laws have been made from time to time which require, either that all ships, or that certain classes of ships, frequenting certain ports, shall employ pilots who are licensed to act at such ports. It is impossible, within the limits of such a work as this, to give even a slight sketch of the extent to which this system prevails at the different ports; for not only does it exist in some ports and not in others, but even where it does exist, the regulations vary in many different ways. The laws on this subject are a confused mass of statutes, local and general, orders in Council, bye-laws

(*b*) *Phillips* v. *Headlam*, 2 B. & Ad. 380. *Law* v. *Hollingsworth*, 7 T. R. 160.
(*c*) See Lord Kenyon's judgment, Arnould on Ins., by Macl., 599.

and cases, and all that we can attempt here is to state the general law which relates to all ports.

Generally speaking, compulsory pilotage exists in its most complete form at Liverpool, Dublin, on the Upper Clyde, at Bristol, and at some other smaller ports.(*d*) In the London Trinity House districts, including the Thames, and most of the out ports on the South Coast, in Hull (*e*) and in some other ports, the system has been very largely modified by exemptions of different kinds; whilst in all the ports on the East Coast north of Hull, at Cork, Cardiff, Newport and Gloucester, as well as at many other smaller ports, there is no compulsory pilotage whatever.(*f*)

The general provisions respecting compulsory pilotage now in force under the Merchant Shipping Act, 1854, are as follow:

Compulsory pilotage, in what mode to be enforced.

353. Subject to any alteration to be made by any pilotage authority in pursuance of the power hereinbefore in that behalf given, the employment of pilots shall continue to be compulsory in all districts in which the same was by law compulsory immediately before the time when this Act comes in operation; and all exemptions from compulsory pilotage then existing within such districts shall also continue in force;(*g*) and every master of any unexempted ship navigating within any such district who, after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose, either himself pilots such ship without possessing a pilotage certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, and every master of any exempted ship navigating within any such district who, after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose, employs or continues to employ an unqualified pilot to pilot her, shall for every such offence incur a penalty of double the amount of pilotage demandable for the conduct of such ship.(*h*)

354. The master of every ship carrying passengers between any place situate in the United Kingdom, or the islands of Guernsey, Jersey,

(*d*) As to Falmouth, see *The Juno*, 1 P. D. 135.

(*e*) *The Rigborgs Minde*, 8 P. D. 132.

(*f*) See General Table of Pilotage Authorities, Maude & Pollock, 4th edition, vol. ii. p. 110.

(*g*) *Reg.* v. *Stanton*, 8 E. & B. 445.

(*h*) 17 & 18 Vict. c. 104. It seems that a master would not be liable for refusing to employ a pilot under section 353, unless the pilot produced his licence, even although the master did not ask to see it. See *Hammond* v. *Blake*, 10 B. & C. 424, decided on sections 58 and 66, in 6 Geo. IV. c. 125 (now repealed), similar to sects. 351 and 353 of 17 & 18 Vict. c. 104. A similar provision to that contained in sect. 353 is contained in sect. 70 of 6 Geo. IV. c. 125, and under this it was held that the prohibition did not preclude the master from applying to his vessel any moving power which he might select. Thus, he was entitled to use another vessel, or boats, or a steam tug for this purpose; and if this could not be done without necessarily devolving upon those who applied the power the selection of the course, and a certain portion, or indeed all the charge and conduct of the ship in that course, still if the *bona-fide* object of the employment was the motive power, the person so employed was not a pilot, and was not within the meaning of the Act. *Beilby* v. *Scott*, 7 M. & W. 93. The amount of the pilotage upon which the penalty is to be paid is that which would accrue on all the remaining voyage, during which the master was bound to have a pilot on board. See *Mackie* v. *Landon*, 6 Taunt. 256, decided on a similar provision in 52 Geo. III. c. 39, s. 11.

Sark, Alderney, and Man, and any other place so situate,(*i*) when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority under the provisions of this or of any other Act, or upon any part thereof so situate, shall, unless he or his mate has a pilotage certificate (*k*) enabling such master or mate to pilot the said ship within such district, granted under the provisions hereinbefore contained, or such certificate as next hereinafter mentioned, being a certificate applicable to such district and to such ship, employ a qualified pilot to pilot his ship; and if he fails so to do he shall for every offence incur a penalty not exceeding one hundred pounds.(*l*)

Home-trade passenger ships to employ qualified pilots, unless they have certificated masters or mates.

§ 563. It must be remembered that the master or mate may have a pilotage certificate granted under sect. 340(*m*) of the Merchant Shipping Act, which may enable him to pilot the ship or ships therein specified, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot; and that this may enable the master to dispense with employment of a pilot in the ship's home port.

Exemptions.

Where master or mate has a certificate.

It has been held that section 353(*n*) of 17 & 18 Vict. c. 104, continues the exemptions of 6 Geo. IV. c. 125 (supplemented by order in Council of 18th Feb. 1854, *infra*, § 564), although that Act was repealed by 17 & 18 Vict. c. 120, and notwithstanding the 376th and 379th sections of 17 & 18 Vict. c. 104.(*o*)

The exemptions of 6 Geo. IV. c. 125, which are so continued in force, are as follows:—

59. For and notwithstanding anything in this Act contained, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers and coming up either (*p*)

Master of certain ships may pilot same so long as not assisted by unlicensed persons.

(*i*) Though within the limits of the same port. *Dublin Port, &c., Board* v. *Shannon*, 7 Ir. R. C. L. 116.

(*k*) As to granting such certificates, see § 34 *ante*.

(*l*) It is not compulsory on an ordinary passenger ship to take a licensed pilot on board under this section, when not carrying passengers, and in such a case the owners are responsible for the negligence of the pilot. Where the master of such a ship had on board his wife and her father, and where they were on board by the master's invitation, as visitors, and without the privity of the owners, and paid no fare until after the collision, it was held that the ship was not "carrying passengers" within this section. *The Lion*, L. R. 2 Adm. 102; affirmed L. R. 2 P. C. 525; *The Hanna*, L. R. 1 Adm. 283; *The Stettin*, Br. & L. 199. This section is not restricted by the provisions of sect. 353, that all existing exemptions should continue in force. Therefore, an Irish trader (as described by 6 Geo. IV. c. 125, s. 59) carrying passengers, is compelled to employ a licensed pilot in the Thames. *The Temora*, Lush. 17.

(*m*) *Supra* § 33.

(*n*) *Ante* § 562.

(*o*) *Stanton* v. *Banks*, 8 El. & Bl. 445; *The Earl of Auckland*, Lush. 164, 387; *Malcolmson* v. *Baldock*, 10 W. R. 124; *The Hanna*, L. R. 1 Adm. 283; *The Stettin*, Br. & L. 199; *The General Steam, &c., Co.* v. *The British, &c., Co.*, L. R. 3 Ex. 330; L. R. 4 Ex. 238; *The Killarney*, Lush. 427. And also the exemptions of the order in Council of the 18th Feb. 1854. *The Hanna*, L. R. 1 Adm. 283. These exemptions apply only to British ships. *The Vesta*, 7 P. D. 240.

(*p*) Sic.

by the North Channel, but not otherwise), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the kingdom, or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof, or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as hereinafter provided; or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs (*q*), the same not being a port or place in relation to which particular provision (*r*) hath heretofore been made by any Act or Acts of Parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully, and without being subject to any of the penalties by this Act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel.

His Majesty in Council may authorise ships not exceeding 60 tons burden to be conducted without pilots, as British ships of the like burden. Masters not liable to penalties for employing unlicensed persons whilst ship in distress.

60. From and after the passing of this Act, it shall and may be lawful for His Majesty, by and with the advice of his Privy Council, or by any order or orders in Council, to permit and authorise ships and vessels not exceeding the burden of sixty tons, and not having a British register, to be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this Act imposed on British ships and vessels not exceeding the like burden.(*s*)

61. Nothing in this Act contained shall extend or be construed to extend to subject the master or owner of any ship or vessel to any of the penalties of this Act for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such owner or master to avail himself of the best assistance which at the time could be procured, anything herein contained to the contrary thereof in anywise notwithstanding.

Master or mate being owner or part owner and residing at Dover, &c., may pilot his own ship in the Thames or Medway. Ships brought into any port by pilots may be removed by the master, &c., for certain purposes.

62. Nothing in this Act contained shall extend or be construed to extend, to subject to any penalty the master or mate of any ship or vessel being the owner or part owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid (*t*) up or down the river Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports.

63. When any ship or vessel shall have been brought into any port or ports in England by any pilot duly licensed, nothing in this Act contained shall extend or be construed to extend to subject to any penalty the master or mate or other person belonging to such ship or vessel, and having the command thereof, or if in ballast, any person or persons appointed by any owner or master or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports, for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

(*q*) *The Stettin*, B. & L. 199; *The Killarney*, Lush. 427.

(*r*) The charter of the Trinity House is such particular provision, and therefore a ship belonging to the port of London is not exempt when carrying passengers within that port. *The Hankow*, 4 P. D. 197.

(*s*) Under this section orders in Council have been made, dated Dec. 13th, 1843, Sept. 3rd, 1843, and Aug. 8th, 1845, exempting certain foreign ships under sixty tons.

(*t*) See *Peake* v. *Screech*, 7 Q. B. 603; *Williams* v. *Newton*, 14 M. & W. 747.

71. Notwithstanding anything in this Act contained, any person whatsoever shall and may lawfully, and without being subject to any penalty by this Act imposed, assume or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel,(*u*) or made a signal for that purpose, or where or so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for the master of such ship or vessel to avail himself of the best assistance which at the time could be procured.

When unlicensed persons, &c., may act as pilots.

§ 564. By an order in Council of the 18th Feb. 1854:

The masters of the undermentioned ships and vessels shall, subject to the provision contained in the 59th section of the Act of Parliament 6 Geo. IV. c. 125, in respect of the employment of unlicensed persons, be exempted from compulsory pilotage, viz.:—

Of ships and vessels trading to Norway, or to the Cattegat, or Baltic, or round the North Cape, or into the White Sea, when coming up the south channels:

Of ships and vessels trading to ports between Boulogne (inclusive) and the Baltic on their outward passages, and when coming up by the south passages: (*x*)

Of ships and vessels passing through the limits of any pilotage district on their voyages from one port to another port, and not being bound to any port or place within such limits, nor anchoring therein.

By the Merchant Shipping Act, 1854: (*y*)

379. The following ships, when not carrying passengers,(*z*) shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts: (that is to say) (*a*)

Exemptions from compulsory pilotage.

(1) Ships employed in the coasting trade(*b*) of the United Kingdom:
(2) Ships of not more than sixty tons burden;
(3) Ships trading to Boulogne or to any place in Europe north of Boulogne (*c*):
(4) Ships from Guernsey, Jersey, Alderney, Sark or Man, which are wholly laden with stone being the produce of those islands: (*d*)

(*u*) *The Carl XV.* (1892) P. 132; on app. *ibid.* 324.

(*x*) A British ship trading between Boulogne and the Baltic, whether carrying passengers or not, is not bound to employ a licensed pilot in the Thames. *The Earl of Auckland*, Lush. 164; *Reg.* v. *Stanton*, 8 El. & Bl. 445; *The Moselle*, 32 L. T. 570.

(*y*) 17 & 18 Vict. c. 104.

(*z*) See *The Lion*, L. R. 2 Adm. 102; affirmed L. R. 2 P. C. 525. *The Hanna*, L. R. 1 Adm. 283; *supra* § 563.

(*a*) This section does not override any exemptions preserved by sect. 353. *Reg.* v. *Stanton*, 8 E. & B 445.

(*b*) A ship ordinarily occupied in the foreign trade going from Liverpool to London, in order to sail from London under advertisement for foreign parts, not carrying passengers, but having on board a cargo shipped at Liverpool and deliverable at London, is not a ship employed in the "coasting trade," and is compellable by sect. 376 to take a pilot in the London district of the Trinity House. *The Lloyd's or Sea Queen*, B. & L. 359; 32 L. J. Adm. 197.

(*c*) These words extend to vessels coming from a place north of Boulogne to the Port of London. *The Wesley*, Lush. 268. So a ship, not carrying passengers, on a voyage from Cronstadt to London, is exempted from compulsory pilotage in the Thames, *S. C.* See also *The Earl of Auckland*, Lush. 387; *The Moselle*, 32 L. T. 570; *Courtney* v. *Cole*, 19 Q. B. D. 447.

(*d*) For extension of the exemptions in this and the preceding sub-section, see order in Council of 21st Dec. 1871, *post*, § 565.

(5) Ships navigating (e) within the limits of the port to which they belong:

(6) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits, or anchoring therein. (f)

And as we have seen in § 551, pilotage authorities have power, under section 332 of this Act, to make bye-laws, with the consent of the Queen in Council, conferring exemptions from compulsory pilotage. A similar power is conferred on the Board of Trade by 25 & 26 Vict. c. 63, s. 39.

§ 565. By an order in Council of the 21st Nov. 1855:

Exemptions for ships in ballast.

All ships which shall arrive from foreign parts or ports or places in the United Kingdom, within the pilotage jurisdiction of the Trinity House, shall, when navigating from thence in ballast to a port or place in the United Kingdom for the purpose of taking on board cargo for delivery at some other port or place in the United Kingdom, be exempt from compulsory pilotage while navigating within the limits of such pilotage jurisdiction, subject, nevertheless, to the terms and conditions following: (that is to say)

First. That the owner or master of the ship claiming exemption from such compulsory pilotage, shall provide himself with a certificate of such exemption for the particular voyage therein specified; such certificate to be signed by the secretary or other proper officer of the Trinity House, and to be delivered to the owner or master of such ship, upon his making a declaration, setting forth that the said ship last arrived from foreign parts, and is about to navigate in ballast to some port or place in the United Kingdom, for the purpose of taking on board cargo, for delivery at another port or place also in the United Kingdom, and such port or places being named in such declaration. And further, that the master of such ship shall produce the said certificate to any duly licensed Trinity House pilot who shall offer his services to pilot such ship on such voyage; and such master shall, on every such occasion, make an entry on the ship's log of the offer by a Trinity House pilot, of the certificate of exemption having been produced to the said pilot, and of his services having been declined.

Second. That in every case in which a certificate of exemption shall have been obtained by misrepresentation, the person on whose application such certificate shall have been granted shall forfeit double the amount of the pilotage to which the ship so exempted would, but for such certificate, have been liable; to be recovered in like manner as penalties are recoverable under the said Act; and,

Third. That in every case in which a ship, for which a certificate of exemption has been granted, shall proceed over sea, either before or after arriving at the port or place specified in such certificate, without navigating with cargo to some other port or place in the United Kingdom, the pilotage to which such ship would have been liable, had a pilot been employed, shall be paid to the pilotage authority or sub-com-

(e) "Navigating" means being within, and therefore a ship belonging to the port of London, and coming from a foreign port, is exempt from the employment of a licensed pilot on the Thames, if not carrying passengers. *The Hankow*, 4 P. D. 197.

(f) As to the extension of this exemption by 25 & 26 Vict. c. 63, s. 41, see *post* § 566.

missioners of the district, and be applied to the purposes of the pilotage fund.

By an order in Council of the 16th July 1857:

All ships mentioned in the 379th section of "The Merchant Shipping Act, 1854," shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts, *as well when carrying passengers* as when not carrying passengers, provided as regards any such ship when carrying passengers, the master or his mate have a pilotage certificate in force for the time being, enabling such master or mate to pilot such ship within such district or districts, granted under the provisions either of the 340th or of the 355th section of the said Act.(*g*)

By an order in Council of the 25th July 1861:

All ships navigating in ballast from any port or place in the United Kingdom, to any other port or place in the United Kingdom, shall, *when not carrying passengers*, be exempt from compulsory pilotage within the pilotage jurisdiction of the said Trinity House.

By an order in Council dated 21st December 1871:

All ships trading from any port or place in Great Britain, within the London district, or any of the Trinity House outport districts, to the port of Brest, in France, or any port or place in Europe, north and east of Brest, or to the islands of Guernsey, Jersey, Alderney, Sark or Man, or from Brest, or any port or place in Europe north and east of Brest, or from the islands of Guernsey, Jersey, Alderney, Sark, or Man, to any port or place in Great Britain within either of the said districts, *when not carrying passengers*, shall be exempted from compulsory pilotage within such districts.

§ 566. In addition to the partial exemptions conferred by the various orders in Council mentioned, the exemption of section 379, sub-section (6) of the Act of 1854(*h*) has been materially extended by the Merchant Shipping Act Amendment Act, 1862.(*i*)

Extension of exemptions from compulsory pilotage.

41. The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries.

Under this section, which is not subject to the qualifications of the previous enactment, a ship passing through the limits of a pilotage district, on a voyage between two places both situate out of such district, does not lose her exemption because she is bound (for a purpose other than loading or discharging) to an intermediate port within the district. A vessel under orders to pro-

(*g*) See this order discussed by Dr. Lushington in *The Earl of Auckland*, Lush. at p. 177. (*h*) See *supra*, § 564. (*i*) 25 & 26 Vict. c. 63.

ceed from London to Holyhead and there pick up a Liverpool pilot, and thence proceed to Liverpool, was not required to take a Holyhead pilot, though she picked up her Liverpool pilot within half a mile of the Holyhead breakwater, diverging five miles from her course and stopping her engines for the purpose.(*k*)

Home-trade passenger ships.

Nor need home-trade passenger ships employ pilots, if they have certificated masters or mates, as we have seen in § 34.

The Master's Duties and Authority while the Pilot is in charge of the Ship.

Supreme authority of pilot.

§ 567. While a licensed pilot is on board by compulsion of law, his authority, in all that relates to the navigation of the ship, supersedes that of the master, who may not interfere with him except under circumstances of an extraordinary nature.(*l*) But the mere suggesting to the pilot to take in a sail, or to keep near a light, or *vice versâ*, or to bring the ship up, is no interference in the legal meaning of the term with the duties of the pilot.(*m*) At the same time the mere fact of taking a pilot on board does not exonerate the master and crew from the proper observance of their own duty. "Although the directions of the pilot may be imperative upon them as to the course the vessel is to pursue, the management of the ship itself is still under the control of the master. It is his duty to secure the safe conduct of his vessel, by issuing the necessary orders, and it is the duty of the crew to carry these orders into execution, and for the due performance of their relative duties, the master and crew are still respectively responsible."(*n*)

Duties of the master and the crew.

While the pilot continues in charge of the navigation of the ship, it is the duty of the master and crew to keep a good look-out;(*o*)—to give the pilot the earliest possible information of an approaching vessel, and to accurately describe her position;(*o*)—to attend to the general management of the ship;(*o*)—to take care that the ship is in ordinary safe trim;(*p*)—that the ship and her equipments are sufficient and proper, and that her crew are competent;(*q*)—to inform the pilot of any defect in the ship or

(*k*) *Gregory* v. *Jones*, 90 L. T. J. 42. See also *The Winston*, 8 P. D. 176; on app. 9 P. D. 85.

(*l*) *The Maria*, 1 W. Rob. at 110; *The Lochlibo*, 3 W. Rob. at 321; 7 Moo. P. C. 427; *The Argo*, Sw. 462; *The Admiral Boxer*, Sw. at 196.

(*m*) *The Lochlibo*, 3 W. Rob. at 329; 7 Moo. P. C. 427. *The Oakfield*, 11 P. D. 34.

(*n*) *Per* Dr. Lushington in *The Diana*, 1 W. Rob. at 135.

(*o*) *The Diana*, 1 W. Rob. at 136; 4 Moo. P. C. 11; *The Iona*, L. R. 1 P. C. 426; *The Velasquez*, L. R. 1 P. C. 494; *The Minna*, L. R. 2 Adm. at 100. But these cases cannot now be considered law as to the burden of proof of negligence in the master or crew. See *post* § 573. *The Batavier*, 1 Sp. at 383, 9 Moo. P. C. at 300; *The Queen*, L. R. 2 Ad. 354.

(*p*) *The Argo*, Sw. 462.

(*q*) *The Christiana*, 7 Moo. P. C. at p. 171; *The City of Cambridge*, L. R. 5 P. C. at 459.

crew;(*r*)—to take care that the anchor is sufficient to hold the ship;(*s*)—and that it is clear and ready to let go, in case the pilot orders it to be dropped;(*t*)—to take care that obedience is promptly rendered by the master and the crew to the pilot in everything that concerns his duty;(*u*)—to repeat, if necessary, the pilot's orders;(*x*)—not to allow an improper light to be carried, even when ordered by the pilot;(*y*)—in cases of accident to take all reasonable measures to meet the emergency;(*z*)—in cases of collision, to give directions for the cutting away of rigging, where such a course may be necessary to prevent further damage;(*a*)—to have the top-gallant and main royal-yards sent down when this is necessary;(*b*)—and, as long as the pilot continues to act, not otherwise to interfere with the conduct of the ship, except in cases of extreme necessity.(*c*)

Duties of the master and the crew.

When a ship is in distress and it is a critical question whether to employ a tug or not, it is the master's duty to follow the directions of the pilot; but in all ordinary cases the master himself is the proper person to determine whether a tug shall be employed or not.(*d*)

As to employing a tug.

But, notwithstanding the presence of the pilot on board, it is the master's duty to resume his own ordinary authority, and to do the best he can under the circumstances, for the interests of his owners and all concerned, in such emergencies as the following: *e.g.*, in cases of great danger, which the pilot does not foresee, or great necessity;(*e*)—and in cases of obvious danger, where it is clear either that the pilot has become incompetent to command, from sudden illness, or from intoxication, or from any other cause;(*f*) or that he is acting in such a manner or steering such a course as would cause the certain destruction of the ship and endanger the lives and property of others.(*g*)

When master may resume his usual authority.

Where the master or crew neglect any of these duties, and such neglect conduces to a collision, the owners and master are liable for the damage, notwithstanding the 388th section of the Merchant Shipping Act, 1854,(*h*) which exempts them from

Consequences of neglect of these duties.

(*r*) *The Meteor*, 9 Ir. Rep. Eq. at 584.
(*s*) *The Massachusetts*, 1 W. Rob. 371.
(*t*) *The Centurion*, 2 Pritch. Adm. Dig., 3rd ed., 1410.
(*u*) *The Diana*, 1 W. Rob. at 136; 4 Moo. P. C. 11; *The Admiral Boxer*, Swab. 193; *The Christiana*, 7 Moo. P. C. 160; *The City of Cambridge*, L. R. 5 P. C. at 459.
(*x*) *The Admiral Boxer*, Swab. 193.
(*y*) *The Ripon*, 10 P. D. 65.
(*z*) *The Octavia Stella*, 57 L. T. 632.
(*a*) *The Massachusetts*, 1 W. Rob. 371.
(*b*) *The Christiana*, 7 Moo. P. C. 160.
(*c*) *The Maria*, 1 W. Rob. 110; *The Lochlibo*, 3 W. Rob. 321; 7 Moo. P. C. 427; *The Admiral Boxer*, Swab. 196.
(*d*) *The Julia*, Lush. at p. 226; on app. 14 Moo. P. C. 210.
(*e*) *The Argo*, Sw. 462; *The Christiana*, 7 Moo. P. C. 160.
(*f*) *The Girolamo*, 3 Hagg. 176; *The Lochlibo*, 3 W.Rob. at p. 321; 7 Moo. P. C. 427; *The Duke of Manchester*, 2 W.Rob. at p. 480; 6 Moo. P. C. 90; *The Christiana*, 7 Moo. P. C. at p. 172; *The Argo*, Swab. at p. 464.
(*g*) *The Christina*, 3 W. Rob. 27; 6 Moo. P. C. 371; *The Girolamo*, 3 Hagg. 176; *The Peerless*, Lush. at 32. See also *The Oakfield*, 11 P. D. 34.
(*h*) 17 & 18 Vict. c. 104.

liability for loss or damage occasioned by the fault or incapacity of any qualified pilot, acting in charge of the ship, within any district where the employment of the pilot is compulsory by law.

The Authority of the Pilot while the Ship is under his Care.

Duty and responsibility of pilot.

§ 568. A ship is under the orders of the pilot for the purposes of navigation only, and he is entitled to the obedience of the master and crew in everything that concerns his duty. "To him belongs the whole conduct of the navigation of the ship, to the safety of which it is important that the chief direction should be vested in one only."(*i*) He is charged with the safety of the ship and of all that she carries, and is bound to use due diligence, care, and reasonable skill. He is consequently answerable, if it is proved that the ship either does or suffers damage through his default, negligence, or want of skill.

It is the pilot's exclusive province and duty to determine the measures to be adopted in getting the ship under way;(*k*)—whether it is safe to proceed;—the course of the ship;—her manœuvres when sailing;—the amount of sail to be carried;—whether and when to lessen sail;—whether and where to bring up;(*l*)—to determine and regulate the speed of the vessel;(*m*)—when the headgear or other sails of the ship should be set or used;(*n*)—the time and manner in which the ship should be brought into a roadstead;(*o*)—the manner of catting the anchor preparatory to its being dropped;(*p*)—the mode, time, and place in which to bring the ship to anchor, and the time and manner in which the anchor should be dropped;(*q*)—whether, if the anchor drags, another should be let go;(*r*)—and where there is a local usage as to navigation depending on local circumstances, to take care that such usage is complied with.(*s*)

When ship is towed.

The authority of a pilot on board a ship which is being towed extends to the tug, as we shall presently see.(*t*)

When the pilot's duty ceases.

The duty of the pilot is at an end when the ship comes to anchor and he leaves her; though if he continues on board

(*i*) Per Parke, B., in *The Christiana*, 7 Moo. P. C. 171; and see *The City of Cambridge*, L. R. 5 P. C. at 459.

(*k*) *The Peerless*, Lush. 30; affd. *ibid.* 103.

(*l*) *The Lochlibo*, 3 W. Rob. 310, 321, 331; 7 Moo. P. C. at 435; *The Maria*, 1 W. Rob. at 110; *The Christiana*, 7 Moo. P. C. at 172; *The Julia*, 14 Moo. P. C. 210; *The City of Cambridge*, L. R. 5 P. C. at 459; *The Oakfield*, 11 P. D. 34; *The Octavia Stella*, 57 L. T. 632.

(*m*) *The Calabar*, L. R. 2 P. C. 238; *The Batavier*, 1 Sp. 378; 9 Moo. P. C. 286.

(*n*) *The Ocean Wave*, L. R. 3 P. C. 210.

(*o*) *The George*, 2 W. Rob. 386.

(*p*) *The Gipsey King*, 2 W. Rob. 537; *The Rigborgs Minde*, 8 P. D. 132; *The Monte Rosa*, (1893) P. 23.

(*q*) *The Agricola*, 2 W. Rob. 10; *The George*, 2 W. Rob. at 388; *The Gipsey King*, 2 W. Rob. 537; *The Christiana*, 7 Moo. P. C. 160; *The Hibernia*, 4 Jur. N. S. 1244; *The City of Cambridge*, L. R. 5 P. C. at 459; *The Princeton*, 3 P. D. 90.

(*r*) *The Northampton*, 1 Sp. 152.

(*s*) *The Christiana*, 7 Moo. P. C. at 173.

(*t*) *Post*, § 575.

after she comes to anchor, she is still under his charge.(*u*) But if he be *functus officio* so far as his compulsory employment is concerned, his presence on board will not relieve the ship from liability for damage done under such circumstances.(*x*)

The pilot cannot discharge himself of his responsibility by deserting the ship before he has completely performed his duty, and she is finally anchored at her destination in a position of safety, or till he has conducted her to the appointed limits of his district.(*y*)

The Liability of Owners and Masters where Pilotage is Compulsory.

Irrespective of statute.

§ 569. If shipowners employ a pilot when not compelled by law to do so,(*z*) even a licensed pilot so employed is the servant of the owners. His presence therefore does not free them from liability for damage occasioned solely by his wrongful or negligent acts, done within the scope of his agency or employment.(*a*) But it is otherwise with a pilot compulsorily employed, who is not the fellow-servant of the crew so as to prevent his suing the shipowner for injuries caused by the negligence of the crew.(*b*)

At common law, the master, being an intermediate agent, would not be liable to his owner for the wrongful acts of the pilot.(*c*)

Independently of legislative provision, our Courts of law have decided, that wherever the employment of a pilot is by law compulsory, that is to say, wherever a statutory penalty is incurred if a pilot is not employed, the owners and masters are not liable for injuries arising solely from the acts of such pilot so employed; as the Courts consider it unjust to hold the owners and master responsible for the skill, sobriety and caution of one whom they have not selected, whom they are compelled to employ, and over whom they have scarcely any control.(*d*)

Dock or harbour masters.

The rule is the same where the ship is acting under the directions of a dock or harbour master, by compulsion of law, as we shall see hereafter, in § 632.(*e*)

(*u*) *The Christiana*, 7 Moo. P. C. 160.

(*x*) *The Woburn Abbey*, 38 L. J. Ad. 28.

(*y*) See 17 & 18 Vict. c. 104, s. 365; *Carruthers* v. *Sydebotham*, 4 M. & S. 77; *The Rigborgs Minde*, 8 P. D. at 135.

(*z*) As to what constitutes compulsion, see *The Hibernian*, L. R. 4 P. C. 511.

(*a*) *The Neptune the Second*, 1 Dods. 467; *The Maria*, 1 W. Rob. at 108; *The Eden*, 2 W. Rob. 442; *The Protector*, 1 W. Rob. at 54; *The Annapolis*, Lush. at 311; *The Earl of Auckland*, Lush. at 176; *The Peerless*, Lush. at p. 114; *The Norway*, B. & L. at p. 393; *The Stettin*, B. & L. at 203; *The Lion*, L. R. 2 Adm. 102, affirmed L. R. 2 P. C. 525.

(*b*) *Smith* v. *Steele*, L. R. 10 Q. B. 125.

(*c*) *Aldrich* v. *Simmons*, 1 Stark. 214; Story, Agency, s. 201.

(*d*) *The Protector* 1 W. Rob. at 54; *The Gipsey King*, 2 W. Rob. 537; *Bowcher* v. *Noidstrom*, 1 Taunt. 568; *The Att.-Gen.* v. *Case*, 3 Price, 302; *Carruthers* v. *Sydebotham*, 4 M. & S. at 85; *The Maria*, 1 W. Rob. 99, 107; *The Bilbao*, Lush. at 153; *The Agricola*, 2 W. Rob. at 19; *The Halley*, L. R. 2 Ad. at 13, on appeal, L. R. 2 P. C. at 201; *The Parlement Belge*, 5 P. D. at 218.

(*e*) *The Economy*, 1 Pritch. Adm. Dig. 3rd ed., 286; *The Bilbao*, Lush. 149.

§ 570. The Merchant Shipping Act, 1854,(*f*) provides as follows:

The statutory exemption.

388. No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified(*g*) pilot acting in charge of such ship, within any district where the employment of such pilot is compulsory by law.

This section must be construed strictly, as it takes away a remedy from persons who have received an injury.(*h*)

The exemption is not affected by a change of pilots if there be but a single pilotage service, for which one set of pilotage dues is paid.(*i*)

It would seem that when the master or mate of a ship is duly licensed(*k*) so as to render it unnecessary for him to take a pilot on board, the employment of such pilot does not bring his owners within the protection of the 388th section.(*l*) Nor would the owners be exempted from liability for the negligence of such a master or mate.

The Courts seem to have felt how unfairly this exemption operated against the ship which suffers damage, for they have much narrowed the exemption by holding, as will be seen hereafter, that, in order that the owners and master of the damaging ship should be entitled to the exemption, the following conditions must be fulfilled:—that the employment of the pilot must be compulsory at the time;—that whenever the casualty can be traced in any degree to the act of the master or crew, the owner is liable;—and that the burden of proving that the casualty was caused by the pilot is upon the owner who avails himself of such a defence.

The 388th section of the Act of 1854, has been held to be not impliedly repealed by subsequent private Acts with inconsistent provisions.(*m*)

But, in order that the owners and master of a ship may be exempted from liability for injury occasioned by the negligence of the pilot, the 388th section requires that the pilot must have been compulsorily employed *within the district where* the injury occurred, but not that he should have been compulsorily employed *at that spot* within the district where the accident happened.

Thus, all vessels coming up the Channel to London are required by sect. 378 of 17 & 18 Vict. c. 104, to take a pilot on board at Dungeness, and to put him in charge of the ship.

(*f*) 17 & 18 Vict. c. 104.

(*g*) See *The Carl XV.* (1892) P. 132, 324.

(*h*) *The General de Caen*, Sw. 9.

(*i*) *The Rigborgs Minde*, 8 P. D. at 135.

(*k*) *Ante*, § 33.

(*l*) *The Killarney*, Lush. 202.

(*m*) *The Conservators of the River Thames* v. *Hall*, L. R. 3 C. P. 415; *The Clan Gordon*, 7 P. D. 190.

The statutory exemption.

From Dungeness to London Bridge is, by sect. 370, constituted the Trinity House pilotage district; but by the same section "no pilot shall be hereafter licensed to conduct ships both above and below Gravesend."

By sect. 59 of 6 Geo. IV. c. 125 (the exemptions of which are, as we have shown, retained by sect. 353 of 17 & 18 Vict. c. 104), vessels being within their own port are exempted from compulsory pilotage.

The defendant's vessel, coming up the Channel to London, took a pilot on board at Dungeness. Before reaching Gravesend, whilst the vessel was still under the control of the pilot, she came into collision with the plaintiff's vessel, through the pilot's negligence. The defendant's vessel belonged to the port of London. It was held that, even assuming that the port of London extends to Yantlett Creek, and that the defendant's vessel was at the time of the collision "*within her own port*," still that the defendants were not liable, inasmuch as sect. 388 does not require, in order to exempt the owner or master from liability, that the pilot should be compulsorily employed *at the spot* where the accident happens, but only that he should have been compulsorily employed "*within the district*" where it happens, and that therefore, as the pilot was compulsorily employed within the district where the accident happened, the defendants were exempted from liability.(*n*)

Foreign ships.

§ 571. It seems that the statutory protection would extend to all ships, as well foreign as English, within the districts in which pilotage is compulsory.(*o*)

Foreign waters.

Where in a foreign country the authority of a pilot compulsorily employed supersedes that of the master, the English Courts will extend to the shipowner the same immunity from liability for negligent navigation that he would be entitled to in a case of compulsory pilotage in this country.(*p*) But where, as by the law of France, the function of the pilot, though compulsorily employed, is merely to advise, and the master remains free to obey him or not, the owner will not be exempted by the English Courts from liability for the negligence of the pilot.(*q*) So also in the case of the Suez Canal,(*r*) and the Danube;(*s*) and the law is the same in the United States,(*t*) Belgium, Holland, Spain, and all other foreign countries where pilotage is compulsory, except in Germany, where the owner has the same

(*n*) *The General Steam, &c., Co.* v. *The British, &c., Co.*, L. R. 3 Ex. 330; 4 Ex. 238.

(*o*) See *The Vernon*, 1 W. Rob. 316; Maude & Pollock, 225; *The General de Caen*, Sw. 9; *The Annapolis*, Lush. at 311.

(*p*) *The Halley*, L. R. 2 P. C. 193.

(*q*) *The Augusta*, 57 L. T. 326.

(*r*) *The Guy Mannering*, 7 P. D. 132.

(*s*) *The Agnes Otto*, 12 P. D. 56.

(*t*) *The China*, 7 Wallace, 53.

exemption from liability for the fault of a compulsory pilot as in this country. In Portugal, Russia, Denmark, and Italy, damages occasioned by the default of the pilot can be recovered from him, or failing him, from the pilotage administration. But the law of this country imposes no liability on pilotage authorities for the fault of a pilot licensed by them.(*u*)

Default must relate to some duty of the pilot.

§ 572. The mere fact of employing a pilot by compulsion of law, does not, as we have already seen, exonerate the master and crew from the proper observance of their own duty.(*x*) The owners will be held liable for any undue interference by the master with the pilot in his own province,(*y*) or for any disobedience to his order by the crew.(*z*) To entitle the owners or master to protection from loss or damage occasioned by the fault or incapacity of the pilot, they must show that the fault complained of was one which related to some of the pilot's duties, and not to any of the duties of the master or crew.(*a*)

Damage must be due solely to pilot's default.

§ 573. To entitle the owners or master of a ship, which is compulsorily under the charge of a licensed pilot, to the benefit of the exemption, it was formerly necessary to prove to the satisfaction of the Court, which had to try the question, that the damage, for which it was sought to make them liable was occasioned *solely* by the neglect or fault of the pilot. The burden of proving this lay on the owners or master claiming to be exempted from liability. It was not enough to prove merely that the pilot was guilty of some fault or negligence which contributed to cause the damage. The owners and master had further to prove that there was no default on the part of the master and crew, or of any of them, which might have, in any degree, contributed or conduced to the accident.(*b*)

Burden of proof.

But this rule as to the burden of proof is no longer law, and the Courts now hold that "where shipowners have proved fault on the part of the pilot sufficient to cause, and in fact causing the calamity, they must be held to have satisfied the condition on which their exemption from liability depends; and they are not to be called upon to adduce proof of a negative character to exclude the mere possibility of contributory fault. But if, in course of the evidence, certain acts or omissions on the part of the crew come out, it will then be incumbent on the owners to

(*u*) *Dudman* v. *Dublin Port and Docks Board*, Ir. R. 7 C. L. 518; *Shaw, Savill & Albion Co.* v. *Timaru Harbour Board*, 15 Ap. Ca. 429.

(*x*) *The Diana*, 1 W. Rob. 131; 4 Moo. P. C. 11; *The Christiana*, 7 Moo. P. C. 160.

(*y*) *The Lochlibo*, 3 W. Rob. 310; 7 Moo. P. C. 427.

(*z*) *The General de Caen*, Swab. 9; *The Christiana*, 7 Moo. P. C. 160; *The Lochlibo*, 7 Moo. P. C. 427.

(*a*) For a discussion of these duties, see *ante*, §§ 567, 568.

(*b*) *The Iona*, L. R. 1 P. C. 426; *The Velasquez*, L. R. 1 P. C. 494: *The Calabar*, L. R. 2 P. C. at p. 241; *The Minna*, L. R. 2 Adm. at 100; *The Peerless*, Lush. at 39; see also *The Carrier Dove*, B. & L. 113; *The Christiana*, 7 Moo. P. C. 160.

show satisfactorily that those acts or omissions in no degree contributed to the damage."(c)

Damage must be due solely to pilot's default.

So if the master or crew are guilty of any act or omission which contributes to the accident, then, although the pilot is also to blame, the owners are not exempted from liability.(d)

Where a collision is caused by a ship in charge of a licensed pilot, the owners and master, in order to exonerate themselves from liability, had formerly to prove, not merely that the crew were under the orders of the pilot at the time, but also, that the order, which caused the damage, was actually given by the pilot; the *onus probandi* being on them.(e)

But in a later case Sir James Hannen held that the liability for the accident must be presumed to be that of the pilot in charge of the ship, unless some definite act was proved either done wrongly or left undone by the crew, within their special province.(f)

There may be cases in which the measures to be adopted are so obvious, that though the pilot ought to have ordered them, but has neglected to do so, such neglect would be no excuse for the master and crew omitting to adopt them.(g)

§ 574. In case of collision it is the duty of the master or person in charge of each vessel to stand by and assist the other, and if he fails to do so without reasonable cause, the collision shall "be deemed to have been caused by his wrongful act, neglect, or default."(h) It has been held that the "person in charge," within the meaning of the statute, is the master and not the pilot, even where compulsorily employed; but it appears that if the collision is caused solely by the neglect of the pilot, the subsequent misconduct of the master will not make the owners liable for the damage.(i)

Tug and tow.

§ 575. When a pilot is employed by compulsion of law on board a ship which is being towed, his authority extends to the control of the navigation of both tow and tug, and the tug is bound to obey his orders, without, however, exempting the master and crew of either vessel from their duty of exercising diligence, care, and skill in the working of their own vessel. Or, to adopt the words of Dr. Lushington, a tug in the performance of an ordinary

(c) Per Lord Chelmsford in *Clyde Navigation Co.* v. *Barclay*, 1 App. Cas. 790; see also *The Daioz*, 47 L. J. Ad. 1; and per Lord Esher, M.R., in *The Indus*, 12 P. D. 46; and see *The Livia*, 25 L. T. 887.

(d) *The Diana*, 1 W. R. 131; *The Lochlibo*, 3 W. R. 310; *The Minna*, L. R. 2 Adm. 97; *The Christiana*, 7 Moo. P. C. 160; *The General de Cuen*, Swab. 9; *The Mobile*, Sw. 69, 127.

(e) *The Schwalbe*, Lush. 239; *The Carrier Dove*, B. & L. 113.

(f) *The Winston*, 8 P. D. 176.

(g) *The Mobile*, Sw. 69, 127; *The Christiana*, 7 Moo. P. C. 160; *The Woburn Abbey*, 38 L. J. Ad. 28; and see *ante* § 567; *The Borussia*, Sw. 94.

(h) 36 & 37 Vict. c. 85, s. 16.

(i) *The Queen*, L. R. 2 Adm. 354 (decided on a similar section in an earlier statute).

Tug and tow.

towage service, should be subservient to the pilot on board the ship in tow, and the master and crew on board the tug should implicitly obey and carry out the pilot's directions.(*k*) And a tug engaged in performing salvage service is generally bound to obey the directions of the pilot on board the vessel salved.(*l*)

If in such cases, by default of the tug, a collision takes place, whether with tug or tow, then the owners of the ship in tow would be responsible, as well as the wrong-doing tug.(*m*)

In clear cases of necessity, however, the master of the steam-tug would be justified in exercising his own discretion and in acting upon his own knowledge independently of the pilot, as for example in cases of salvage, where the master of the steam-tug is called in to remedy the errors or misfortunes of the pilot, or where he sees a pilot acting in such a manner as to threaten the certain destruction of his own vessel and to endanger the lives and property of others.(*n*)

Where a ship is in tow of a steam-tug, and damage is caused by collision, due solely to the default of the compulsory pilot on board the tow, the master and owners of the ship are exempted from liability by the statute.(*o*)

But it has been held by Sir Robert Phillimore that in such a case the statutory protection does not extend to the tug, probably on the ground that while the tow submits to the control of the pilot by compulsion of law, the tug does so by voluntary contract with the tow whose servant she becomes.(*p*)

Rights, Privileges and Remuneration of Pilots.

Rights, privileges, and remuneration of pilots.

§ 576. A pilot is a mariner,(*q*) and since the Judicature Acts can probably sue in the Admiralty Division for work done within the body of a county as well as on the high seas, but, as we shall see presently, his most effective remedy lies in the summary jurisdiction given by section 363 of the Merchant Shipping Act, 1854.(*r*)

Pilots are entitled to nothing more than the fixed pilotage dues for ordinary pilotage services, and this because the rates of their remuneration are fixed on liberal scales; they have almost a monopoly of the service; and, in return, the law expects them to

(*k*) *The Christina*, 3 W. Rob. 27; 6 Moo. P. C. 371; *The Duke of Sussex*, 1 W. Rob. 270; *The Energy*, L. R. 3 Adm. 48; *Spaight* v. *Tedcastle*, 6 Ap. Ca. 217; *The Niobe*, 13 P. D. 55.

(*l*) *The Minnehaha*, Lush. at 353; 15 Moo. P. C. 133.

(*m*) *The Gipsey King*, 2 W. Rob. at 543; *The Mary*, 5 P. D. 14; *The Sinquasi*, 5 P. D. 241; *The Quickstep*, 15 P. D. at 199.

(*n*) *Per* Dr. Lushington, *The Christina*, 3 W. Rob., at 29; 6 Moo. P. C. 371.

(*o*) *The Ocean Wave*, L. R. 3 P. C. 205.

(*p*) *The Mary*, 5 P. D. 14. Under a similar clause in the earlier Pilotage Act, Dr. Lushington held the tug not liable: *The Duke of Sussex*, 1 W. Rob. 270; *The Gipsey King*, 2 W. Rob. at 542; *The Christina*, 3 W. Rob. 27.

(*q*) *Ross* v. *Walker*, 2 Wils. 264.

(*r*) See *post* § 578.

be always ready, and requires them to afford their assistance, unless under circumstances of absolute danger to their lives.(s) Their occupation is necessarily attended with some peril, but it is in consideration of this that the ordinary rate of pilotage is fixed on a liberal scale. They are under the obligation to discharge their duties in spite of the ordinary hazards of their calling, without seeking for any extraordinary reward. Therefore, though they contribute to the safety of the ship, they are not entitled under ordinary circumstances to claim salvage. "It may be, in an extraordinary case, difficult to distinguish a case of pilotage from a case of salvage, properly so called, for it is possible that the safe conduct of a ship into a port, under circumstances of extreme danger and personal exertion, may exalt a pilotage service into something of a salvage service."(t)

Remuneration of pilots.

Pilotage and salvage.

No pilot is bound to go on board a vessel in distress (u) to render pilot service, for mere pilotage reward.(x)

When ship in distress or unseaworthy.

When pilots go on board ships which are not seaworthy, and which are therefore in a state of danger, they are entitled to say, "We do not come in the character of pilots only, but also in the character of salvors," and in such cases they are not debarred from receiving the compensation which others, who are not pilots, would receive.(y)

So a pilot, while engaged in the performance of his duty on board a ship, if called upon in any emergency to perform extraordinary services necessary for the safety of the ship, not within his duties as pilot, may be entitled to additional remuneration in the nature of salvage for those salvages.(z) But, it is not every slight exertion on the part of pilots, beyond their pilotage services, that will entitle them to salvage remuneration, and the Court of Admiralty in general discourages the attempt to convert pilotage into salvage services.(a)

Where duties performed not pilotage.

§ 577. The following sections of the Merchant Shipping Act, 1854,(b) deal with the rights and remuneration of pilots :—

356. If any boat or ship having a qualified pilot on board leads any ship which has not a qualified pilot on board when such last mentioned

(s) *The General Palmer*, 2 Hag. 176; *The Enterprise*, 2 Hag. 178 n.; *The Columbus*, ibid., n.; *The Joseph Harvey*, 1 C. Rob. 306; *The Jonge Andries*, Sw. 303; *The Funchal Baptista*, 3 Hag. 386 n.

(t) Per Sir W. Scott, in *The Joseph Harvey*, 1 C. Rob. 306; *The Hedwig*, 1 Sp. 19; *The Enterprise*, 2 Hag. 178 n.; *The General Palmer*, 2 Hag. 176; *The Aglaia*, 13 P. D. 160.

(u) As to the meaning of the phrase "in distress," see *Akerblom* v. *Price*; 7 Q. B. D. at 133.

(x) *The Frederick*, 1 W. Rob. 16; *The Hebe*, 2 W. Rob. 246; *The Eliza*, Lush. 536.

(y) *The Jonge Andries*, Swab. at 305; *The Industry*, 3 Hag. 203; *The Elizabeth*, 8 Jur. 365; *The King Oscar*, 6 N. of C. 284; *The Hebe*, 2 W. Rob. 246.

(z) *The Saratoga*, Lush. at 321; *The Hebe*, 2 W. Rob. 246; *The Minnehaha*, 15 Moo. P. C. 133.

(a) *The Jonge Andries*, Swab. at 229; *The Monarch*, 12 P. D. at 8.

(b) 17 & 18 Vict. c. 104.

Qualified pilot unable to board, when entitled to pilotage.

ship cannot from particular circumstances be boarded, the pilot so leading such last-mentioned ship shall be entitled to the full pilotage for the distance run, as if he had actually been on board and had charge of such ship.

Allowance to qualified pilot taken out of his district.

357. No pilot, except under circumstances of unavoidable necessity, shall without his consent be taken to sea or beyond the limits for which he is licensed in any ship whatever; and every pilot so taken under circumstances of unavoidable necessity or without his consent shall be entitled, over and above his pilotage, to the sum of ten shillings and sixpence a day,(c) to be computed from and inclusive of the day on which such ship passes the limit to which he was engaged to pilot her up to and inclusive of the day of his being returned in the said ship to the place where he was taken on board, or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and in such last-mentioned case he shall be entitled to his reasonable travelling expenses.

Penalty on making a false declaration as to draught of ship or falsifying marks.

359. If any master, on being requested by any qualified pilot having the charge of his ship to declare her draught of water, refuses to do so, or himself makes or is privy to any other person making a false declaration to such pilot as to such draught, he shall incur a penalty for every such offence not exceeding double the amount of pilotage which would have been payable to the pilot making such request; and if any master or other person interested in a ship makes or is privy to any other person making any fraudulent alteration in the marks on the stern or stem post (*sic*) of such ship denoting her draught of water, the offender shall incur a penalty not exceeding five hundred pounds.

Power of qualified pilot to supersede unqualified pilot.

360. A qualified pilot may supersede an unqualified pilot, but it shall be lawful for the master to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot; and in case of dispute the pilotage authority by whom the qualified pilot is licensed shall determine the proportionate sum to which each party is entitled.

§ 578. And by the Merchant Shipping (Pilotage) Act, 1889 :(d)

Employment of unqualified pilots.

5. If any master of a ship navigating outside a district in which pilotage is compulsory knowingly employs or continues to employ an unqualified pilot after a qualified pilot has offered to take charge of the ship, or has made a signal for that purpose, he shall in every case incur a penalty of double the amount of pilotage demandable for the conduct of the ship.

The Merchant Shipping Act, 1854,(e) further provides that:

Penalty on unqualified person acting as pilot.

361. An unqualified pilot (f) assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, shall for each offence incur a penalty not exceeding fifty pounds.

Occasions on which unlicensed persons may act as pilots.

362. An unqualified pilot may within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances: (that is to say)

When no qualified pilot has offered to take charge of such ship, or made a signal for that purpose; or

(c) But this allowance for detention is not a "pilotage due" for which the shipbroker is liable under s. 363 of the Act. *Morteo* v. *Julian*, 4 C. P. D. 216.

(d) 52 & 53 Vict. c. 68.

(e) 17 & 18 Vict. c. 104.

(f) Though on the articles as third mate: *Turner* v. *Peat*, 53 J. P. 230.

When a ship is in distress, or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by an unqualified pilot without infringing the regulations of the port or any orders which the harbour-master is legally empowered to give.

Liability for and recovery of pilotage dues.

363. The following persons shall be liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained; (that is to say) the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, as to pilotage inwards, and in the port from which she clears out as to pilotage outwards; and in default of payment such pilotage dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of this Act; but such recovery shall not take place until a previous demand thereof has been made in writing.

Power for consignees to retain pilotage dues paid by them.

364. Every consignee and agent (not being the owner or master) hereby made liable for the payment of pilotage dues in respect of any ship may, out of any monies in his hands received on account of such ship or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability.

Offences of Pilots.

§ 579. The Merchant Shipping Act, 1854,(*g*) provides as follows:

Penalty on qualified pilot receiving or master offering improper rate.

358. Any qualified pilot demanding or receiving, and also any master offering or paying to any pilot, any other rate in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law, shall for each offence incur a penalty not exceeding ten pounds.(*h*)

Penalties on qualified pilot: exercising certain trades; offending against revenue; guilty of corrupt practices; lending licence; acting when suspended; acting when drunk;

365. If any qualified pilot commits any of the following offences, that is to say:

(1) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public-house or place of public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco, or tea;

(2) Commits any fraud or other offence against the revenues of customs, or excise, or the laws relating thereto;

(3) Is in any way directly or indirectly concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea, or by shipwreck, or to their monies, goods, or chattels;

(4) Lends his licence;

(5) Acts as pilot whilst suspended;

(6) Acts as pilot when in a state of intoxication;

(7) Employs or causes to be employed on board any ship of which he has the charge any boat, anchor, cable, or other store,

(*g*) 17 & 18 Vict. c. 104.

(*h*) Varied by order in Council of 5th Feb. 1873, in respect of pilotage between Gravesend and London Bridge. See *post*, § 582.

unnecessarily causing expense;

matter, or thing beyond what is necessary for the service of such ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of any other person;

declining to go off;

(8) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence upon the signal for a pilot being made by such ship, or upon being required to do so by the master, owner, agent, or consignee thereof, or by any officer of the pilotage authority by whom such pilot is licensed, or by any principal officer of customs:

unnecessarily cutting or slipping cable; refusing to conduct ship into port;

(9) Unnecessarily cuts or slips or causes to be cut or slipped any cable belonging to any ship;

(10) Refuses, on the request of the master, to conduct the ship of which he has the charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship;

quitting ship.

(11) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed;

He shall for each such offence, in addition to any liability for damages, at the suit of the person aggrieved, incur a penalty not exceeding one hundred pounds, and be liable to suspension or dismissal by the pilotage authority by whom he is licensed; and every person who procures, abets, or connives at the commission of any such offence shall likewise, in addition to any such liability for damages as aforesaid, incur a penalty not exceeding one hundred pounds, and, if a qualified pilot, shall be liable to suspension or dismissal by the pilotage authority by whom he is licensed.(*i*)

Penalty on pilot endangering ship, life, or limb.

366. If any pilot, when in charge of any ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person on board such ship; or if any pilot, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from danger to life or limb; the pilot so offending shall for each such offence be deemed guilty of a misdemeanor, and, if a qualified pilot, also be liable to suspension and dismissal by the authority by which he is licensed.(*i*)

Penalty on pilot in charge of a ship doing her wilful injury.

367. If any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of such ship, such person, and every other person procuring, abetting, or conniving at the commission of such offence, shall, in addition to any liability for damages at the suit of the party aggrieved, incur a penalty not exceeding one hundred pounds, and, if the offender is a qualified pilot, he shall also be liable to suspension or dismissal by the pilotage authority by which he is licensed.(*i*)

The Trinity House.

§ 580. The provisions of the Merchant Shipping Act, 1854,(*k*) dealing especially with the Trinity House, are as follows:

(*i*) As to appeals from decision of pilotage authority, see *ante*, § 555.
(*k*) 17 & 18 Vict. c. 104.

368. The Trinity House may, in exercise of the general power hereinbefore given to all pilotage authorities of doing certain things in relation to pilotage matters, alter such of the provisions hereinafter contained as are expressed to be subject to alteration by them in the same manner and to the same extent as they might have altered the same, if such provisions had been contained in any previous Act of Parliament instead of in this Act.

Power of Trinity House to alter regulations.

369. The Trinity House shall continue to appoint sub-commissioners, not being more than five nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in Council, but not otherwise, appoint like sub-commissioners for any other district in which no particular provision is made by any Act of Parliament or charter for the appointment of pilots; but no pilotage district already under the authority of any sub-commissioners appointed by the Trinity House shall be extended, except with such consent as aforesaid, and no sub-commissioners so appointed shall be deemed to be pilotage authorities within the meaning of this Act.

Power of Trinity House to appoint sub-commissioners.

370. The Trinity House shall continue, after due examination by themselves or their sub-commissioners, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits following or any portion of such limits: (that is to say)

Trinity House to license pilots to act within certain limits.

(1) "The London district," comprising the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom as far as Orfordness to the north and Dungeness to the south; so nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend:

(2) "The English Channel district," comprising the seas between Dungeness and the Isle of Wight:

(3) "The Trinity House outport districts," comprising any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament or charter.(*l*)

371. Subject to any alteration to be made by the Trinity House, the names of all pilots licensed by the Trinity House shall be published in manner following: (that is to say)

Publication of notice of licences of pilots by the Trinity House of pilots.

(1) The Trinity House shall at their house in London fix up a notice specifying the name and usual place of abode of every pilot so licensed, and the limits within which he is licensed to act:

(2) The Trinity House shall transmit a copy of such notice to the commissioners of customs in London, and to the principal officers of customs resident at all ports within the limits for which such pilot is licensed; and such notice shall be posted up by the commissioners at the Custom House in London, and by such officers at the custom houses of the ports at which they are respectively resident.

372. Subject to any alteration to be made by the Trinity House, every Trinity House pilot on his appointment shall execute a bond for one hundred pounds conditioned for the due observance on his part of the regulations and bye-laws of the Trinity House, such bond to be free from stamp duty, and from any other charge except the actual expense for preparing the same.

Bonds to be given.

(*l*) *Hadgraft* v. *Hewith*, L. R. 10 Q. B. 350.

Liability limited.

373. No qualified pilot who has executed such bond as is hereinbefore mentioned shall be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage on which he is engaged.

Continuance and renewal of licences.

374. Subject to any alteration to be made by the Trinity House, no licence granted by them shall continue in force beyond the thirty-first day of January next ensuing the date of such licence, but the same may, upon the application of the pilot holding such licence, be renewed on such thirty-first day of January in every year, or any subsequent day, by indorsement under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose.(*n*)

Power to revoke and suspend licences.

375. The Trinity House shall have power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit.(*o*)

§ 581. With respect to compulsory pilotage the Act provides:

Penalty on masters of ships employing unlicensed pilots, or acting as pilot.

376. Subject to any alteration to be made by the Trinity House, and to the exemptions hereinafter contained, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London district, and the Trinity House outport districts, as hereinbefore defined; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding five pounds for every fifty tons burden of such ship.

Trinity House to make regulations for a constant supply of qualified pilots at Dungeness.

377. Subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots shall always be ready to take charge of ships coming from the westward past Dungeness; and the Trinity House shall, by bye-law to be made in the same manner as other bye-laws made under the powers herein contained, make such regulations with respect to the pilots under their control as may be necessary in order to provide for an unintermitted supply of qualified pilots for such ships, and to ensure their constant attendance upon and due performance of their duty both by night and day, whether by cruising between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by both of such means, or by any other means, and whether in rotation or otherwise, as the Trinity House think fit.

Ship coming past Dungeness not having pilot on board to take the first qualified pilot who offers.

378. Subject to any alteration to be made by the Trinity House, every master of any ship coming from the westward, and bound to any place in the rivers Thames and Medway (unless she has a qualified pilot on board or is exempted from compulsory pilotage), shall, on the arrival of such ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving to in proper time or shortening sail, or by any practicable

(*n*) See *The Beta*, B. & L. 328.

(*o*) As to appeals by pilots, see 52 & 53 Vict. c. 68, s. 4, *ante* § 555.

means consistent with the safety of his ship, facilitate such pilot getting on board, and shall give the charge of piloting his ship to such pilot; or if there are two or more of such pilots offering at the same time to such one of them as may, according to the regulations for the time being in force, be entitled or required to take such charge; and if any such master fails to display or keep flying the usual signal for a pilot in manner hereinbefore required, or to facilitate any such qualified pilot as aforesaid getting on board as hereinbefore required, or to give the charge of piloting his ship to such pilot as hereinbefore mentioned in that behalf, he shall incur a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship, such penalty to be paid to the Trinity House, and to be carried to the account of the Trinity House Pilot Fund.

Penalty on masters failing to display usual signal for pilot.

There are certain exemptions from compulsory pilotage in the districts under the jurisdiction of the Trinity House, as we have already seen in § 564.

Exemptions

§ 582. The Merchant Shipping Act, 1872,(*p*) enacts:

9. Notwithstanding anything in the 358th section of the Merchant Shipping Act, 1854, the Trinity House may by bye-laws made with the sanction of Her Majesty in Council, repeal or relax the provisions of that section within the whole or any part of their district, so far as to allow any pilot or class of pilots under their jurisdiction to demand or receive, and any master to offer or pay, any rate less than the rate for the time being demandable by law.

Trinity House may modify rule as to pilotage rates.

Under this section the following bye-law has been made, and approved by order in Council of 5th Feb. 1873:

From and after the 1st day of January 1873, no pilot licensed by the Trinity House for the River Thames between Gravesend and London Bridge only, shall incur any penalty for demanding or receiving, in respect of the pilotage within the limits aforesaid, of any ship exempted from compulsory pilotage any rate less than the rate for the time being demandable by law in respect of such ship, and no master of any such ship shall incur any penalty for offering or paying, in respect of the pilotage of any such ship within the limits aforesaid, any rate less than the rate for the time being demandable by law in respect of such ship, anything contained in the 358th section of "The Merchant Shipping Act, 1854," to the contrary notwithstanding.(*pp*)

§ 583. The Merchant Shipping Act, 1854,(*q*) further provides:

380. Subject to any alteration to be made by the Trinity House (*r*) there shall continue to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as are immediately before the time when this Act comes into operation payable to them in respect of such services.

Rates of pilotage.

381. Subject to any alteration to be made by the Trinity House, and notwithstanding anything hereinbefore contained, there shall be paid in respect of all foreign ships trading to and from the port of London, and not exempted from pilotage, the following pilotage dues: that is to

Payment of pilotage due from foreign ships trading to and from the port of London.

(*p*) 35 & 36 Vict. c. 73.

(*pp*) A similar O. in C. applying *mutatis mutandis* to pilotage between the Nore and Rochester was made on 6th Sept. 1880.

(*q*) 17 & 18 Vict. c. 104.

(*r*) The rates now payable to the Trinity House are prescribed by bye-law made under s. 333 of the Act, and approved by Order in Council of 1st Nov. 1862. See Appx. No. 12.

say, as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law; and payment of such pilotage dues shall be made to the collector of customs in the port of London by some one or more of the following persons, that is to say, the master or other person having the charge of such ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for such ship in the said port of London; and such pilotage may be recovered in the same manner as other pilotage dues are hereinbefore declared to be recoverable.

Certificate of payment of pilotage to be given.

382. Subject to any alteration to be made by the Trinity House, the said collector of customs shall, on receiving any pilotage dues in respect of foreign ships, give to the person paying the same a receipt in writing; and no officer of customs in the port of London shall grant a clearance or transire for any such foreign ship as aforesaid without the production of such receipt; and if any such ship attempts to go to sea without such clearance or transire, any such officer may detain her until the said receipt is produced.

Application of such monies by Trinity House.

383. Subject to any alteration to be made by the Trinity House, the said collector shall pay over to the Trinity House the pilotage dues received by him in respect of any foreign ship; and the Trinity House shall apply the same in manner following:

In the first place, in paying to any pilot who may bring sufficient proof of his having had the charge of such ship such dues as would have been payable to him for such pilotage service if the ship had been a British ship, after deducting therefrom the poundage due to the Trinity House:

In the second place, in paying to any unlicensed person who may bring sufficient proof of his having, in the absence of a licensed pilot, had the charge of such ship, such amount as the Trinity House may think proper, not exceeding the amount which would under similar circumstances have been payable to a licensed pilot, after deducting poundage:

And, lastly, shall pay over to the Trinity House Pilots Fund the residue, together with all poundage deducted as aforesaid.

Settlement of difference as to draught of ship.

384. Whenever any difference arises between the master and the qualified pilot of any ship trading to or from the port of London as to her draught of water, the Trinity House shall, upon application by either party, made, in case of a ship inward-bound, within twelve hours after her arrival or at some time before she begins to discharge her cargo, and in the case of a ship outward-bound before she quits her moorings, appoint some proper officer, who shall measure the ship, and settle the difference accordingly: And there shall be paid to the officer measuring such ship, by the party against whom he decides, the following sums: (that is to say), one guinea if the ship be below and half a guinea if the ship be above the entrance of the London Docks at Wapping.

§ 584. With respect to the Trinity House Pilot Fund the Act provides:

Payments to be made to the Pilot Fund.

385. Subject to any alteration to be made by the Trinity House, there shall continue to be paid to them, and carried over to the Trinity House Pilot Fund,(s) the sums of money following: (that is to say)

(s) As to transference of property and liabilities of Cinque Ports Pilots to Trinity House, see 16 & 17 Vict. c. 129, ss. 10–13; as to payments to Trinity House Pilotage Fund by Cinque Ports pilots, 35 & 36 Vict. c. 73, s. 10; and as to Bristol Channel pilots, formerly licensed by Trinity House, 25 & 26 Vict. c. 63, s. 42.

(1) A poundage of sixpence in the pound upon the pilotage earnings of all pilots licensed by the Trinity House;

(2) A sum of three pounds three shillings to be paid on the first day of January in every year by every person licensed by the Trinity House to act as pilot in any district not under the superintendence of sub-commissioners, or in any part of such district:

And any qualified pilot giving a false account of his earnings, or making default in payment of any sum due from him under this section, shall forfeit double the amount payable, and shall further be liable, at the discretion of the Trinity House, to suspension or dismissal.(*t*)

Application of fund.

386. Subject to any prior charges that may be subsisting thereon by virtue of any Act or Acts of Parliament or otherwise, the said Trinity House Pilot Fund shall be chargeable in the first instance with such expenses as the Trinity House may duly incur in performance of their duties in respect of pilots and pilotage, and after payment thereof shall, subject to any alteration to be made by the Trinity House, be administered by the Trinity House for the benefit of such pilots licensed by them after the first day of October, one thousand eight hundred and fifty-three, as are incapacitated for the performance of their duty by reason of age, infirmity, or accident, or of the widows and children of pilots so licensed, or of such incapacitated pilots only.

Power to Trinity Houses of Hull and Newcastle to appoint sub-commissioners

387. The two corporations of the Trinity Houses of the ports of Hull and Newcastle (*u*) shall continue to appoint sub-commissioners, not being more than seven nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of her Majesty in Council, but not otherwise, appoint like sub-commissioners for any other district situate within their respective jurisdictions; but no pilotage district already under the authority of any sub-commissioners appointed by either of the said corporations shall be extended, except with such consent as aforesaid; and no sub-commissioners appointed or to be appointed by the Trinity Houses of Hull and Newcastle shall be deemed to be pilotage authorities within the meaning of this Act, nor shall anything in this Act contained be held to confer upon the commissioners for regulating the pilotage of the port of Kingston-upon-Hull, and of the river Humber, any jurisdiction of a different nature or character from that which they have heretofore exercised.

(*t*) As to appeals by pilots, see 52 & 53 Vict. c. 68, s. 4, *ante*, § 555.

(*u*) The greater part of the pilotage jurisdiction of the Trinity House of Newcastle has now been transferred to the Tyne, Sunderland, and Hartlepool Pilotage Commissioners respectively.

CHAPTER XIII.

PASSENGERS.

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The Master's Authority over the Passengers.

The extent of the master's authority over the passengers.

§ 585. THE safety and conduct of the ship, passengers and cargo are entrusted to the master, and depend upon his skill and judgment. And as misconduct on the part of the passengers would seriously hinder him in the performance of his duties, and might in many cases imperil or lead to the loss of all, the law invests him with a large authority over them whilst the ship is at sea. The master may lawfully require whatever is necessary for the security of the ship, the proper discipline of the crew, or the safety of all on board, not only of the ship's company, who have expressly contracted to obey him, but of those also whom he has engaged to carry to their destination, on the implied condition of submission to his rule.(*a*) The exercise of such a wide, almost despotic, and necessarily undefined power as this, is of course limited strictly by the exigency of the case;(*b*) but if

(*a*) Abbott, 13th edit. p. 211; *Boyce* v. *Bayliffe*, 1 Camp. 58. The law is the same in the United States. Parsons on Shipping, i. 636; Angell on Carriers, 5th edit. § 623.

(*b*) *King* v. *Franklin*, 1 F. & F. 360.

necessity arise, the master may enforce and justify orders which would otherwise render him liable to civil or even criminal proceedings.

The extent of the master's authority over the passengers.

In the United States, the law on this subject is similar to our own, and there, as here, the master's authority over the passenger is limited by the necessity of the case. The master has a right to command and compel the service of a passenger, in case of actual danger from a peril of the sea; as, for instance, to work at the pumps, if the ship leaks.(*c*)

But he would have no right to compel a passenger, in any ordinary circumstances, where such necessity did not exist, to do duty as one of the crew; and even where it did exist, he could not require more exertion or exposure than was strictly necessary and reasonable under all the circumstances. He certainly could not require the passenger to do what might be safe enough for a practised and skilled seaman, but what would be very dangerous to a landsman; as, for example, to go out upon a yard-arm and furl a sail in a tempest.(*d*)

§ 586. The master has authority to exercise so much force over the passengers as is necessary for the safety of the ship and the well-being and comfort of all on board. He is not bound to wait for actual mutiny. He may arrest any movements towards it, on the part either of the passengers or of the crew. He may, if necessary, arrest and imprison a passenger; but to justify his doing so, the passenger must have acted in a way which was calculated, in the judgment of a reasonable man, to interfere with the safety of the ship or the due prosecution of the voyage.(*e*)

The master has a right to require and to compel the passengers to give their assistance in cases of attacks by enemies, and if a passenger refuse to obey reasonable orders, the master may confine him, if such confinement is necessary to the discipline of the crew and the safety of the vessel.(*f*)

He may exclude a passenger from the table where the other passengers mess, if he misconduct himself at table, or if his conduct is unbecoming a gentleman in the strict sense of the word; or if he threaten the master with personal violence.(*g*)

But to imprison a passenger for seven days in his cabin for alleged insolence to the master, is an excessive use of the master's power, and not justifiable.(*h*)

If a master exceeds the limits of justice and moderation, he is

(*c*) Parsons on Shipping, I. 637; *The Branston*, 2 Hag. 3 n.; *Newman* v. *Walters*, 3 B. & P. at 615.

(*d*) Parsons, i. 637.

(*e*) *Prendergast* v. *Compton*, 8 C. & P. 454; *Boyce* v. *Bayliffe*, 1 Camp. 58; *Aldworth* v. *Stewart*, 14 L. T. N. S. 862; *Reg.* v. *Leggett*, 8 C. & P. 191.

(*f*) *Boyce* v. *Bayliffe*, 1 Camp. 58.

(*g*) *Prendergast* v. *Compton*, 8 C. & P. 454.

(*h*) *Aldworth* v. *Stewart*, 14 L. T. N. S. 862.

The extent of the master's authority over the passengers.

liable to be sued in a court of common law,(*i*) or in the Court of Admiralty, which may award damages to the injured party.(*k*)

The master has a lien for the passage-money upon the luggage of a passenger, and upon any other property he may have on board; but not on the person of the passenger himself, nor on the clothes which he is actually wearing when he is about to leave the vessel.(*l*)

The Master's Duties to the Passengers irrespective of the Statutes.

Distinction between carriers of passengers and of goods.

§ 587. There is a broad distinction between the respective liabilities of carriers of passengers and common carriers of goods.

Common carriers of goods, whether by land or sea, are insurers against all contingencies, except losses by the act of God or the Queen's enemies, or the inherent vice or defect of the thing carried itself.(*m*) Carriers of passengers are only liable for actual negligence.(*n*)

Liability of carriers of passengers.

The contract of such a carrier and the obligations undertaken by him are to take due care (including in that term the use of skill and foresight) to carry a passenger safely.(*o*) And "due care" means, having reference to the nature of the contract to carry, a high degree of care, and casts on carriers the duty of exercising all vigilance to see that whatever is required for the safe conveyance of their passengers is in fit and proper order.(*o*)

Liability of master and shipowner to passengers.

So masters and owners of passenger ships are only liable to their passengers for the want of due care, skill and foresight to convey them safely. They are not liable for an injury which happens by mere accident, without fault on their part;(*p*) and it seems that there is no implied warranty on the part of the master or owners with a passenger, that the ship is seaworthy.(*q*)

§ 588. Those who hold themselves out as carriers of passengers by water are bound to receive and carry all who apply for a passage, and who offer to pay the regular fare or passage-money, as long as there is sufficient room, unless special causes for refusal exist.(*r*)

(*i*) *Watson* v. *Christie*, 2 B. & P. 224; *Aitken* v. *Bedwell*, M. & M. 68; *Rhodes* v. *Leach*, 2 Stark. 516.

(*k*) *The Enchantress*, 1 Hag. 395; *The Ruckers*, 4 C. Rob. 73; *Chamberlain* v. *Chandler*, 3 Mason, 242.

(*l*) *Wolf* v. *Summers*, 2 Camp. 631; *per* Lawrence, J. As to master's lien see *ante*, § 293.

(*m*) *Mors* v. *Slue*, Sir T. Raym. 220; *Coggs* v. *Bernard*, 1 Smith's L. C., 9th edit. 241; *Trent Navigation* v. *Wood*, 3 Esp. 127. See also § 301, *ante*.

(*n*) *Christie* v. *Griggs*, 2 Camp. 79; *Crofts* v. *Waterhouse*, 3 Bing. 319; *Readhead* v. *Mid. R. Co.*, L. R. 4 Q. B. 379; *Blower* v. *G. W. R.*, L. R. 7 C. P. 655; *Nugent* v. *Smith*, 1 C. P. D. 423.

(*o*) Per Montague Smith, J., *Readhead* v. *The Mid. R. Co.*, L. R. 4 Q. B. at 381, 393.

(*p*) Angell on Carriers, 5th edit. § 521.

(*q*) *Readhead* v. *Midland R. Co.*, L. R. 4 Q. B. at 391; but see Parsons on Shipping, i. 641, where the learned author apparently uses the word "warranty" in a sense other than that usually attributed to it by English lawyers.

(*r*) Parsons on Shipping, i. 611; Angell on Carriers, 5th edit. §§ 525, 612.

But the master would be justified in refusing to accept as a passenger, a person who might endanger the other passengers by a contagious disease, or annoy them by his drunkenness, or by his disreputable conduct, or vulgar habits;(s) or who refused to obey the reasonable regulations of the ship, or who had a design to injure the owners and master in their business.(t) But it would seem that if a passenger, who might have been refused a passage on account of his bad reputation, character, or habits, has been received on board as a passenger, he cannot afterwards be expelled, as long as he is guilty of no impropriety on board; nor can he be treated with such insult or contumely as would compel him to leave the ship. And if the master does so expel him or treat him, the shipowners and master will be liable.(u)

Protection and considerate treatment.

§ 589. Passengers on board a ship are entitled, independently of any statutory provision or special contract, to protection and to kind and considerate treatment on the part of the master. They are, on the other hand, bound to conform in all respects to the regulations and discipline of the vessel on which they have embarked.(x)

In the words of Mr. Justice Story, "the contract of the passengers with the master is not for mere ship room and personal existence on board, but for reasonable food, comforts, necessaries, and kindness. It is a stipulation, not for toleration merely, but for respectful treatment, for that decency of demeanour which constitutes the charm of social life, for that attention which mitigates evil without reluctance, and for that promptitude which administers aid to distress."(y)

It is therefore the duty of the shipowners and master to supply the passengers with suitable accommodation by day and night, and with sufficient and wholesome food, but if reasonable care has been taken to make proper provision, the law will make allowance for the difficulties which necessarily appertain to all transport by water, and will not hold the owners or master liable for an unexpected inferiority in or deficiency of provisions.(z)

Food.

If a dietary scale, such as is required by the statute, is not incorporated into the contract, the passenger is entitled to such food as is reasonable for him as a cabin or steerage passenger respectively, in quantity, quality, and regular supply. But the plaintiff must have suffered real injury from a neglect to supply,

(s) As to the statutory power of the master of a home-trade passenger steamship to refuse or remove passengers who are drunk or misconduct themselves, see *post*, § 626.

(t) Parsons on Shipping, i. 614–618; Angell on Carriers, 5th edit. §§ 525, 612.

(u) *Coppin* v. *Braithwaite*, 8 Jur. 875; Parsons i. 618.

(x) Maude & Pollock, p. 692.

(y) *Chamberlain* v. *Chandler*, 3 Mason, 242; Parsons on Shipping, i. 639.

(z) Parsons on Shipping, i. 625; and see *Corbyn* v. *Leader*, 6 C. & P. at 42.

to entitle him to maintain an action. "It is not because a man does not get so good a dinner as he might have had, that he has therefore a right of action against the master."(*a*)

Rights and Liabilities of Passengers under their Contract, irrespective of the Statutes.

Passage money.

§ 590. With respect to passage-money, the rights and liabilities(*b*) of passengers are governed by the same principles as those which regulate ordinary contracts.

Where a passenger is induced to enter into the contract by representations which are fraudulent, that is to say, false within the knowledge of the party making them, the contract is void, even though the misrepresentations are not embodied in the contract. Where a representation is not fraudulent, but only untrue in point of fact, its untruth forms an excuse for the non-performance of the agreement on the part of the passenger, provided it relates to a matter which forms an essential part of the contract.(*c*)

Thus the master of a ship sought to recover damages from a passenger for breach of a verbal agreement, by which he engaged two cabins on a voyage from England to Madras. Statements were made to him by the shipowner, that the ship would sail on a particular day, but she did not do so, and consequently the passenger refused to go. The jury were directed, that if the day fixed was not understood by the parties to be of the essence of the contract, and the ship sailed within a reasonable time, the shipowner was entitled to recover, according to the usage of that particular trade, one-half the passage-money.(*d*)

When passenger entitled to a return of the passage-money.

§ 591. Where the passage-money, though payable at the place of destination, becomes due at the commencement of the voyage, and not conditionally on the prosperous termination thereof, it will be payable notwithstanding the loss of the ship and all on board during the passage.(*e*) If a passage by the particular ship is not provided according to the contract, the passenger has, at common law, a right to a return of the passage-money and to damages.(*f*) Where the ship is lost before the commencement of the voyage contracted for, there is a total failure of consideration, and the passage-money, which has been paid in anticipation, may be recovered.(*g*) But if the ship is not lost until after the voyage

(*a*) Per Lord Denman, C.J., in *Young* v. *Fewson*, 8 C. & P. 55.

(*b*) As to their rights and liabilities under the statutes, see *infra*, §§ 593–624.

(*c*) Maude and Pollock's Shipping, 693; *Moens* v. *Heyworth*, 10 M. & W. 147.

(*d*) Per Tindal, C.J., *Yates* v. *Duff*, 5 C. & P. 369; and see *Cranston* v. *Marshall*, 5 Ex. 395.

(*e*) *Moffat* v. *The East India Co.*, 10 East, 468.

(*f*) Maclachlan, 4th edit., p. 338.

(*g*) *Gillan* v. *Simpkin*, 4 Camp. 241. As to the rights of passengers of emigrant ships to recover back their passage-money when left behind, see 18 & 19 Vict. c. 119, s. 48; *infra*, § 616.

contracted for has been commenced, then, as the failure of consideration is only partial, the passage-money cannot be recovered.(*h*)

If there is an express contract between a passenger and the master, the rights of the parties will of course be governed by its terms.(*i*) Express contract.

§ 592. The right of passengers on board a ship in distress to claim salvage for services rendered towards preserving the ship or cargo will be subsequently discussed when we come to deal with salvage.(*k*) Salvage.

The Statutory Provisions for the Protection of Passengers.

§ 593. Careful provisions have been made by Act of Parliament for the protection of passengers, and heavy penalties attached to their infraction by owners or masters.

The statutory provisions with respect to boats and other appliances for saving life at sea, as prescribed by 51 & 52 Vict. c. 24, have been already detailed in §§ 108, 109. Boats and life-saving appliances.

Part 4 of the Merchant Shipping Act, 1854,(*l*) provides as follows:

291. The Fourth Part of this Act shall apply to all British ships; and all foreign steam ships carrying passengers between places in the United Kingdom shall be subject to all the provisions contained in the fourth part of this Act, and likewise to the same provisions with respect to the certificates of the masters and mates thereof, to which British steam ships are subject.

Build and Equipment of Steam Ships.(*m*)

§ 594. The following enactments relate to this subject. By the principal Act:

301. Steamships shall be provided as follows: (that is to say)

(1) Every steam ship of which a survey is hereby required shall be provided with a safety valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if such valve is in addition to the ordinary valve, it shall be so constructed as to have an area not less, and a pressure not greater, than the area of and pressure on that valve: Equipment of steam ships. Safety valve.

(2) Every sea-going steam ship employed to carry passengers shall have her compasses properly adjusted from time to time; such adjustment, in the case of ships surveyed as hereinafter Compasses be adjusted.

(*h*) *Gillan* v. *Simpkin*, 4 Camp. 241; Maclachlan, 4th edit., p. 338.

(*i*) See *Corbin* v. *Leader*, 10 Bing. 275; *Adderley* v. *Cookson*, 2 Camp. 15; *Gillan* v. *Simpkin*, 4 Camp. 241; *Yates* v. *Duff*, 5 C. & P. 369; *Wilton* v. *The Atlantic, &c.*, 10 C. B. N. S. 453; *Haigh* v. *R. M. S. P. Co.*, 52 L. J. Q. B. 395, 640.

(*k*) *Post*, § 707.

(*l*) 17 & 18 Vict. c. 104.

(*m*) 52 & 53 Vict. c. 46, s. 5 extends the provisions of the Merchant Shipping Acts to ships propelled by electricity or other mechanical power, *Mayor, &c., of Southport* v. *Morriss* (1893), 1 Q. B. 359.

mentioned, to be made to the satisfaction of the shipwright surveyor, and according to such regulations as may be issued by the Board of Trade:

Fire hose.

(3) Every sea-going steam ship (unless used solely as a steam tug) shall be provided with a hose adapted for the purpose of extinguishing fire in any part of the ship, and capable of being connected with the engines of the ship:

Shelter for deck passengers.

(5) Every home-trade steam ship employed to carry passengers by sea shall be provided with such shelter for the protection of deck passengers (if any) as the Board of Trade, having regard to the nature of the passage, the number of deck passengers to be carried, the season of the year, the safety of the ship, and the circumstances of the case, may require:

And if any steam ship as aforesaid plies or goes to sea from any port in the United Kingdom without being so provided as hereinbefore required, then, for each default in any of the above requisites the owner shall (if he appears to be in fault) incur a penalty not exceeding one hundred pounds, and the master shall (if he appears to be in fault) incur a penalty not exceeding fifty pounds.

Penalty for improper weight on safety valve.

302. If any person places an undue weight on the safety valve of any steam ship, or, in the case of steam ships surveyed as hereinafter mentioned, increases such weight beyond the limits fixed by such engineer surveyor as hereinafter mentioned, he shall, in addition to any other liabilities he may incur by so doing, incur a penalty not exceeding one hundred pounds.

And by the Merchant Shipping Act, 1876:(*n*)

Provision of signals of distress, inextinguishable lights, and life buoys in passenger steamers and emigrant ships.

21. Every sea-going passenger steamer, and every emigrant ship shall be provided to the satisfaction of the Board of Trade—

(1) With means for making the signals of distress at night specified in the First Schedule to the Merchant Shipping Act, 1873,(*o*) or in any rules substituted therefor, including means of making flames on the ship which are inextinguishable in water, or such other means of making signals of distress as the Board of Trade may previously approve; and

(2) With a proper supply of lights inextinguishable in water, and fitted for attachment to life-buoys.

If any such steamer or ship goes to sea from any port of the United Kingdom without being so provided as required by this section, for each default in any of the above requisites the owner shall, if he appears to be in fault, incur a penalty not exceeding one hundred pounds, and the master shall, if he appears to be in fault, incur a penalty not exceeding fifty pounds.

Survey of Passenger Steamers.

§ 595. The Merchant Shipping Act, 1854,(*p*) provides:

Definition of "Passenger" and "Passenger Steamer."

303. For the purpose of the enactments herein contained with respect to surveys and certificates of passenger steam ships, the word "passengers" shall be held to include any persons carried in a steam ship other than the master and crew and the owner, his family and servants;(*q*) and the expression "passenger steamer" shall be held to include every British steam ship carrying passengers to, from, or

(*n*) 39 & 40 Vict. c. 80.
(*o*) See *post*, § 700.
(*p*) 17 & 18 Vict. c. 104.
(*q*) *Hedges* v. *Hooker*, 60 L. T. 822.

between any place or places in the United Kingdom, excepting steam ferry boats working in chains, commonly called steam bridges.

And by the Merchant Shipping Act, 1872 :(*r*)

8. Every passenger steamer shall be surveyed once at the least in every year in the manner mentioned in the fourth part of that (*u*) Act. The fees (*s*) to be charged for certificates issued in respect of such survey shall not exceed for a yearly certificate twice the sum named in the table marked T(*t*) in the schedule to the said Act(*u*) as chargeable for a six months' certificate.

Passenger steamers to be surveyed. Fees to be paid for certificates.

§ 596. These provisions are qualified by the following sections of the Merchant Shipping Act, 1876 :(*x*)

16. Any steamship may carry passengers not exceeding twelve in number, although she has not been surveyed by the Board of Trade as a passenger steamer, and does not carry a Board of Trade certificate as provided by the Merchant Shipping Act, 1854, with respect to passenger steamers.

Exemption of certain steamers from passenger certificates.

17. Where the legislature of any British possession provides for the survey of and grant of certificates for passenger steamers, and the Board of Trade report to Her Majesty that they are satisfied that the certificates are to the like effect, and are granted after a like survey, and in such manner as to be equally efficient with the certificates granted for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, it shall be lawful for Her Majesty by Order in Council—

Colonial certificates for passenger steamers.

1. To declare that the said certificates shall be of the same force as if they had been granted under the said Acts; and
2. To declare that all or any of the provisions of the said Acts which relate to certificates granted for passenger steamers under those Acts shall, either without modification or with such modifications as to Her Majesty may seem necessary, apply to the certificates referred to in the Order; and
3. To impose such conditions and to make such regulations with respect to the said certificates, and to the use, delivery, and cancellation thereof, as to Her Majesty may seem fit, and to impose penalties not exceeding fifty pounds for the breach of such conditions and regulations.(*xx*)

18. In every case where a passenger certificate has been granted to any steamer by the Board of Trade under the provisions of the Merchant Shipping Act, 1854, and remains still in force, it shall not be requisite for the purposes of the employment of such steamer under the Passengers Acts that she shall be again surveyed in her hull and machinery in order to qualify her for service under the Passengers Act, 1855, and the Acts amending the same; but for the purposes of employment under those Acts such Board of Trade certificate shall be deemed to satisfy the requirements of the Passengers Acts with respect to such survey, and any further survey of the hull and machinery shall be dispensed with; and so long as a steam ship is an emigrant ship—that is, a passenger ship—within the meaning of the Passengers Act,

Provision against double survey in case of passenger steamers and emigrant ships.

(*r*) 35 & 36 Vict. c. 73.

(*s*) By 45 & 46 Vict. c. 55, s. 4, these fees are to be accounted for and paid to the Mercantile Marine Fund.

(*t*) See the Table of Fees required to be kept posted conspicuously in every Mercantile Marine office.

(*u*) 17 & 18 Vict. c. 104. See § 598, *post*.

(*x*) 39 & 40 Vict. c. 80.

(*xx*) Orders in Council have been made under this section applying to Bengal, Bombay, New Zealand, and South Australia.

1855, and the Acts amending the same, and the provisions contained in the said Passengers Acts as to the survey of her hull, machinery, and equipments have been complied with, she shall not be subject to the provisions of the Merchant Shipping Act, 1854, with respect to the survey of and certificate for passenger steamers, or to the enactments amending the same.

Provision as to survey of foreign passenger steamer or emigrant ship.

19. Where a foreign ship is a passenger steamer subject to the Merchant Shipping Act, 1854, and the Acts amending the same, or an emigrant ship subject to the Passengers Act, 1855, and the Acts amending the same, and the Board of Trade are satisfied, by the production of a foreign certificate of survey attested by a British consular officer at the port of survey, that such ship has been officially surveyed at a foreign port, and are satisfied that the requirements of the said Acts, or any of them, are proved by such survey to have been substantially complied with, the Board may, if they think fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give or direct one of their officers to give a certificate, which shall have the same effect as if given upon survey under the said Acts or any of them: Provided that Her Majesty may by Order in Council direct that this section shall not apply in the case of an official survey at any foreign port at which it appears to Her Majesty that corresponding provisions are not extended to British ships.

§ 597. As to surveyors, the Merchant Shipping Act, 1872,(y) enacts:

Duties of surveyors

13. All duties in relation to the survey and measurement of ships under this Act or the Acts amended hereby shall be performed by the surveyors appointed under the fourth part of the Merchant Shipping Act, 1854, in accordance with such regulations as may be from time to time made by the Board of Trade.

And by the Merchant Shipping Act, 1854:(z)

Board of Trade to appoint surveyors, and fix their remuneration.

305. The Board of Trade may from time to time appoint such number of fit and proper persons to be shipwright surveyors and engineer surveyors for the purposes of this Act at such ports or places as it thinks proper, and may also appoint a Surveyor General for the United Kingdom, and may from time to time remove such surveyors or any of them, and may from time to time fix and alter the rates of remuneration to be received by such surveyors.(a)

Surveyors to have power to inspect.

306. It shall be lawful for the said surveyors in the execution of their duties to go on board any steamship at all reasonable times, and to inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, or any certificates of the master or mate to which the provisions of this Act or any of the regulations to be made by virtue thereof apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage, and if in consequence of any accident to any such ship, or for any other reason they consider it necessary so to do, to require the ship to be taken into dock for the purpose of surveying the hull thereof; and any person who hinders any such surveyor from going on board any such steamship, or otherwise impedes him in the execution of his duty under this Act, shall incur a penalty not exceeding five pounds.

(y) 35 & 36 Vict. c. 73.
(z) 17 & 18 Vict. c. 104.
(a) By 45 & 46 Vict. c. 55, s. 3, the salaries of such surveyors and the expenses in connection with the survey are charged on and payable out of the Mercantile Marine Fund, so far as they are not paid by any private person.

307. The said surveyors shall execute their duties under the direction of the Board of Trade, and such Board shall make regulations as to the manner in which the surveys hereinafter mentioned shall be made, and as to the notice to be given to the surveyors when surveys are required, and as to the amount and payment of any travelling or other expenses incurred by such surveyors in the execution of their duties, and may thereby determine the persons by whom and the conditions under which such payment shall be made.

Board of Trade to regulate mode of making surveys.

308. Every surveyor who demands or receives directly or indirectly from the owner or master of any ship surveyed by him under the provisions of this Act any fee or remuneration whatsoever for or in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, shall incur a penalty not exceeding fifty pounds.

Penalty on surveyors receiving fees unlawfully.

§ 598. The duties of the owners with respect to surveys are thus prescribed by the principal Act:

309. The owner of every passenger steamer shall cause the same to be surveyed at the times hereinafter directed (*aa*) by one of the said shipwright surveyors and by one of the said engineer surveyors so appointed as aforesaid; such shipwright surveyor being, in the case of iron steamers, a person who is in the judgment of the Board of Trade properly qualified to survey such ships; and such surveyors shall thereupon, if satisfied that they can with propriety do so, give to such owner declarations as follows:

Owners to have surveys made by shipwright and engineer surveyors, and surveyors to give declarations.

The declaration of the shipwright surveyor shall contain statements of the following particulars: (that is to say)

(1) That the hull of the ship is sufficient for the service intended, and in good condition:

(2) That the partitions, boats, life-buoys, lights, signals, compasses, and shelter for deck passengers, and the certificates of the master and mate or mates, are such, and in such condition, as required by this Act:

(3) The time (if less than six months) for which the said hull and equipments will be sufficient:

(4) The limits (if any) beyond which, as regards the hull and equipments, the ship is in the surveyor's judgment not fit to ply:

(5) The number of passengers which the ship is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins; such numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires:

And the declaration of the engineer surveyor (*b*) shall contain statements of the following particulars: (that is to say)

(1) That the machinery of the ship is sufficient for the service intended, and in good condition:

(2) The time (if less than six months) for which such machinery will be sufficient:

(3) That the safety valves and fire hose are such and in such condition as are required by this Act:

(4) The limits of the weight to be placed on the safety valves:

(5) The limits (if any) beyond which, as regards the machinery, the ship is in the surveyor's judgment not fit to ply:

(*aa*) See 35 & 36 Vict. c. 73, s. 8; *ante*, § 595.

(*b*) By 25 & 26 Vict. c. 63, s. 12, this declaration must also, in the case of a ship required to have a certificated engineer, contain a statement that such engineer's certificate is such as is required by that Act.

And such declarations shall be in such form as the Board of Trade directs.(c)

Transmission of declarations to Board of Trade.

310. The said owner shall transmit such declarations to the Board of Trade within fourteen days after the dates of the receipt thereof respectively, and in default shall forfeit a sum not exceeding ten shillings for every day that the sending of such declarations is delayed; and such sum shall be paid upon the delivery of the certificate hereinafter mentioned in addition to the fee payable for the same, and shall be applied in the same manner as such fees.

Penalty for delay.

Board of Trade to issue certificates.

312. Upon the receipt of such declarations the Board of Trade shall, if satisfied that the provisions of the fourth part of this Act have been complied with, cause a certificate in duplicate to be prepared and issued to the effect that the provisions of the law with respect to the survey of the ship and the transmission of declarations in respect thereof have been complied with; and such certificate shall state the limits (if any) beyond which, according to the declaration of the surveyors, such ship is not fit to ply, and shall also contain a statement of the number of passengers which, according to the declaration of the shipwright surveyor, such ship is fit to carry, distinguishing (if necessary) between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, such number to be subject to such conditions and variations according to the time of year, the nature of the voyage, the cargo carried, and other circumstances, as the case requires.

Issue and transmission of certificates.

313. The Board of Trade shall transmit such duplicate certificate to the [superintendent of Mercantile Marine offices], or to some other public officer at such port as the owner may mention for the purpose or at the port where the owner or his agent resides or where the ship was surveyed and is for the time being lying, and shall cause notice of such transmission to be given by post or otherwise to the master or owner or his agent; and the said [superintendent] or officer shall deliver such duplicate certificate to the said owner, master, or agent on his applying and paying the fees(d) and other sums(e) (if any) herein mentioned as payable in that behalf; and in proving the due issue and transmission to the owner, agent, or master of such certificate it shall be sufficient to show that the same has been duly received by such [superintendent] or public officer as aforesaid, and that due notice of the transmission thereof to such [superintendent] or officer has been given to such owner, master, or agent.

§ 599. With respect to certificates the Act proceeds:

How long certificates to continue in force.

315. No certificate shall be held to be in force for the purposes of the fourth part of this Act beyond the date fixed by the Board of Trade for the expiration thereof; and no certificate shall be in force after notice is given by the Board of Trade to the owner, agent, or master of the ship to which the same relates, that such Board has cancelled or revoked the same: Provided, that if any passenger steamer is absent from the United Kingdom at the time when her certificate expires, no penalty shall be incurred for the want of a certificate until she first begins to ply with passengers after her next subsequent return to the United Kingdom; and the Board of Trade may require any certificate which has expired, or has been revoked or

(c) By 39 & 30 Vict. c. 80, s. 14, a shipowner, aggrieved by a declaration of a shipwright surveyor or engineer surveyor under this section, may appeal to the Court of Survey. See *post*, § 602.

(d) See 35 & 36 Vict. c. 73, s. 8; *ante*, § 595.

(e) By 45 & 46 Vict. c. 55, s. 4, these "fees and other sums" are to be accounted for and paid to the Mercantile Marine Fund.

cancelled, to be delivered up as it directs; and any owner or master who without reasonable cause, neglects or refuses to comply with such requirement, shall incur a penalty not exceeding ten pounds.

Board of Trade may cancel certificates and require fresh declarations.

316. The Board of Trade may revoke and cancel such certificates in any case in which it has reason to believe—

(1) That the declarations of the sufficiency and good condition of the hull, equipments, and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made, or,

(2) That such certificate has otherwise been issued upon false or erroneous information; or,

(3) That since the making of such declarations the hull, equipments, or machinery of such ship have sustained any injury, or are otherwise insufficient:

And in every such case the Board of Trade may, if it thinks fit, require the owner to have the hull, equipments, or machinery of such ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before re-issuing any certificate or granting a fresh one in lieu thereof.

Copy of certificate to be placed in conspicuous part of ship.

317. The owner or master of every passenger steamer shall forthwith on the transmission of any such certificate as aforesaid to him or his agent cause one of the duplicates thereof so transmitted to be put up in some conspicuous part of the ship, so as to be visible to all persons on board the same, and shall cause it to be continued so put up so long as such certificate remains in force and such ship is in use; and in default such owner or master shall for every offence incur a penalty not exceeding ten pounds.

Ship not to proceed on her voyage without certificate.

318. It shall not be lawful for any passenger steamer to proceed to sea or upon any voyage or excursion with any passengers on board,(*f*) unless the owner or master thereof has received from such Board such a certificate as hereinbefore provided for,(*g*) such certificate being a certificate applicable to the voyage or excursion on which such ship is about to proceed; and no officer of customs shall grant any clearance or transire for any passenger steamer unless upon the production of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid); and if any passenger steamer attempts to ply or go to sea without such production, any such officer may detain her until such certificate is produced; and if any passenger steamer plies or goes to sea with any passengers(*h*) on board, without having one of the duplicates of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid), so put up as aforesaid in some conspicuous part of the ship, the owner thereof shall for such offence incur a penalty not exceeding one hundred pounds, and the master of such ship shall also incur a further penalty not exceeding twenty pounds.

Penalty for carrying passengers in excess of numbers specified in certificate.

319. If the owner or master or other person in charge of any passenger steamer receives on board thereof or on or in any part thereof, or if such ship has on board thereof or on or in any part thereof, any number of passengers which, having regard to the time, occasion, and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not

(*f*) But see 39 & 40 Vict. c. 80, s. 16, *ante*, § 596.

(*g*) An infraction of this provision, with the privity of the shipowner, will vitiate a policy of insurance on the ship—Aliter, if the illegality be the act of the master alone: *Dudgeon* v. *Pembroke*, L. R. 9 Q. B. 581; 2 Ap. Ca. 284.

(*h*) *Hedges* v. *Hooker*, 60 L. T. 822. A vessel engaged in carrying passengers for hire round an artificial lake is not a ship within the meaning of this section. *Mayor, &c., of Southport* v. *Morriss*, (1893) 1 Q. B. 359.

exceeding twenty pounds, and also an additional penalty not exceeding five shillings for every passenger over and above the number allowed by the certificate, or, if the fare of any of the passengers on board exceeds five shillings, not exceeding double the amount of the fares of all the passengers who are over and above the number so allowed as aforesaid, such fares to be estimated at the highest rate of fare payable by any passenger on board.

Forgery of declaration or certificate a misdemeanor.

320. Every person who knowingly and wilfully makes or assists in making or procures to be made a false or fraudulent declaration or certificate with respect to any passenger steamer requiring a certificate under the fourth part of this Act, or who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration or certificate required by the fourth part of this Act, or any words or figures in any such declaration or certificate, or any signature thereto, shall be deemed guilty of a misdemeanor.

Surveyors to make returns of the build and other particulars of steam ships, and owners and masters to give information for that purpose.

321. The said surveyors shall from time to time make such returns to the Board of Trade as it requires with respect to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of machinery and equipments of the ships surveyed by them; and every owner, master, and engineer of any such ship shall, on demand, give to such surveyors all such information and assistance within his power as they require for the purpose of such returns; and every such owner, master, or engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance, shall be liable to a penalty not exceeding five pounds.

The Passengers Acts.

§ 600. Elaborate provision is made by the Passengers Acts for securing the safety and comfort of passengers, and masters become liable to heavy penalties if the prescribed requirements are not carefully observed.

Passenger Act, 1855.

The following are the sections of the Passengers Act, 1855,(*i*) bearing on the subject:

Definition of terms used in this Act.

"North America."

"West Indies."

"Governor."

"Statute adult."

"Passage."

"Passengers."

3. For the purposes of this Act, the following words and expressions, whenever they occur, shall respectively have the following significations, if not inconsistent with the context or subject-matter; . . . . the expression "North America" shall signify and include the Bermudas, and all ports and places on the eastern coast of the continent of North America, or in the islands adjacent or near thereto, or in the Gulf of Mexico north of the Tropic of Cancer; the expression "West Indies" shall signify the West India Islands, the Bahamas, British Guiana, and Honduras; the expression "governor" shall signify the person who for the time being shall be lawfully administering the government of any British colony in which he may be acting; the expression "statute adult" shall signify any person of the age of twelve years or upwards, or two persons between the ages of one and twelve years; the expression "passage" shall include all passages except cabin passages; the expression "passengers" shall include all passengers except cabin passengers, and except labourers under indenture of the Hudson's Bay Company, and their families, conveyed in ships the property of or chartered by the said Company, and no persons shall be deemed cabin passengers unless the space allotted to their exclusive use shall be in

(*i*) 18 & 19 Vict. c. 119.

the proportion of at least thirty-six clear superficial feet to each statute adult, nor unless they shall be messed throughout the voyage at the same table with the master or first officer of the ship, nor unless the fare contracted to be paid by them respectively shall be in the proportion of at least thirty shillings for every week of the length of the voyage as computed under the provisions of this Act for sailing vessels proceeding from the United Kingdom to any place south of the Equator, and of twenty shillings for such vessels proceeding to any place north of the Equator, nor unless they shall have been furnished with a duly signed contract ticket according to the form in Schedule (K)(*k*) of this Act; the expression "upper passenger deck" shall signify and include the deck immediately beneath the upper deck, or the poop or round house and deck house when the number of passengers and cabin passengers carried in such poop, round house, or deck house shall exceed one-third of the total number of passengers which such ship can lawfully carry on the deck next below; the expression "lower passenger deck," the deck next beneath the upper passenger deck, not being an orlop deck; the expression "ship" shall signify any description of sea-going vessel, whether British or foreign; . . . . the expression "master" shall signify the person who shall be borne on the ship's articles as master, or who, other than a pilot, shall for the time being be in charge or command of any such ship or "passenger ship": (*l*)

"Upper passenger deck."

"Lower passenger deck."

"Ship."

"Master."

4. This Act shall extend to every "passenger ship"(*l*) proceeding on any voyage from the United Kingdom to any place out of Europe and not being within the Mediterranean Sea, and on every colonial voyage as hereinafter described, and in the particulars mentioned or referred to in sections one hundred, one hundred and one, and one hundred and two, to every ship bringing passengers into the United Kingdom from any place out of Europe and not being within the Mediterranean Sea; but shall not extend to any of Her Majesty's ships of war, nor to any ships in the service of the Commissioners for executing the office of Lord High Admiral of the United Kingdom.

To what vessels and voyages this Act extends.

10. The master of every ship, whether a "passenger ship"(*m*) or otherwise, fitting or intended for the carriage of passengers, or which shall carry passengers upon any voyage to which this Act extends, shall afford to such emigration officer as aforesaid (*n*) at any port or place in Her Majesty's dominions, and, in the case of British ships, to Her Majesty's consular officer at any foreign port or place at which such ship shall be or arrive, every facility for inspecting such ship, and for communicating with the passengers, and for ascertaining that the provisions of this Act, so far as the same may be applicable to such ships,

Facilities to be given to the proper officers for the inspection of all ships fitting for passengers.

(*k*) See form, *post*, § 625.

Definition of "Passenger ship."

(*l*) By 26 & 27 Vict. c. 51, s. 3, the term "passenger ship" shall signify every description of sea-going vessel, whether British or foreign, carrying, upon any voyage to which the provisions of the said "Passengers Act, 1855," shall extend, more than fifty passengers, or a greater number of passengers than in the proportion of one statute adult to every thirty-three tons of the registered tonnage of such ships, if propelled by sails, or than one statute adult to every twenty tons, if propelled by steam.

In *Ellis* v. *Pearce*, E. B. & E. 431, it was held that a sailing ship was not a "passenger ship" within the meaning of sects. 3 and 71 of 18 & 19 Vict. c. 119, because she carried more than the number of passengers mentioned in this Act, if that number or proportion could not be made up without reckoning cabin passengers, even although those persons had not received contract tickets, under the 71st sect.; for the provisions of the Act, with reference to contract tickets, are only applicable in the case of passenger ships, and the non-delivery of the tickets on board a ship, that is not a passenger ship, does not render it necessary to count the cabin passengers as steerage passengers.

(*m*) *Ante*, § 600, n.

(*n*) Appointed by the Board of Trade for the purpose of carrying this Act into execution, 18 & 19 Vict. c. 119, s. 8.

Penalty on master failing to comply, &c.

have been duly complied with; the master of any ship who shall omit or fail to comply with any of the requirements of this section shall be liable to a penalty not exceeding fifty pounds.

Certificates of Clearance, and requirements thereof.

§ 601. Before a passenger ship can clear the following requirements must be complied with:

No passenger ship to clear without certificate from emigration officer, nor until bond be given to the Crown.

11. No ship fitted or intended for the carriage of passengers as a "passenger ship"(*o*) shall clear out or proceed to sea until the master thereof shall have obtained from the emigration officer at the port of clearance a certificate of clearance under his hand that all the requirements of this Act, so far as the same can be complied with, before the departure of such ship, have been duly complied with, and that such ship is, in his opinion, seaworthy, in safe trim, and in all respects fit for her intended voyage, and that her passengers and crew are in a fit state to proceed, nor until the master shall have joined in executing such bond(*p*) to the Crown as required by the sixty-third section of this Act: Provided, that if such emigration officer shall refuse to grant such certificate, and the owner, or charterer of such ship shall appeal in writing to the [Board of Trade],(*op*) [the Board of Trade] shall appoint any two other emigration officers, or any two competent persons at the expense of the appellant, to examine into the matter, and if the persons so appointed shall grant a certificate under their joint hands to the purport hereinbefore required, such certificate shall be held to be of the same effect as if granted by the emigration officer of the port of clearance.

Appeal on refusal of certificate.

§ 602. The Merchant Shipping Act, 1876,(*pp*) gives an appeal to the Court of Survey against a refusal to grant this certificate, in the following terms:

14. If a shipowner feels aggrieved—

(1) by a declaration of a shipwright surveyor or an engineer surveyor respecting a passenger steamer under the above-recited enactments, or by the refusal of a surveyor to give the said declaration; or

(2) by the refusal of a certificate of clearance for an emigrant ship under the above-recited enactments; or

(3) by the refusal of a certificate as to lights or fog signals under the above-recited enactment,

the owner may appeal in the prescribed manner to the court of survey(*pq*) for the port or district where the ship for the time being is.

On such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and the other provisions of the said enactments have been complied with, may—

(1) In the case of a passenger steamer give their certificate under section three hundred and twelve of the Merchant Shipping Act, 1854, and

(*o*) *Ante*, § 600, n.

(*p*) By 35 & 36 Vict. c. 19, and 38 & 39 Vict. c. 51, no British vessel may carry Pacific Island labourers unless the master, with one surety, enter into a bond for £500 to the crown, and receive a licence from the Governor of one of the Australasian colonies, or a British Consular Officer. Any infraction of this provision renders the vessel liable to seizure, and the master to a penalty of £500. If committed without the authority of the owner, the master becomes guilty of barratry, so as to enable his owner to recover on a policy of insurance against such a peril. *Australasian Insurance Co.* v. *Jackson*, 33 L. T. 286, *ante*, § 219.

(*op*) By 35 & 36 Vict. c. 73, all powers and duties vested in the Emigration Commissioners are transferred to the Board o Trade.

(*pp*) 39 & 40 Vict. c. 80.

(*pq*) See sec. 7, *ante*, § 529.

(2) In the case of an emigrant ship give, or direct the emigration or other officer to give, a certificate of clearance under the above-mentioned enactments, and

(3) In the case of a refusal of a certificate as to lights or fog signals, give or direct a surveyor or other person appointed by them to give a certificate under section thirty of the Merchant Shipping Act Amendment Act, 1862.

Subject to any order made by the judge of the court of survey, the costs of and incidental to an appeal under this section shall follow the event.

Subject as aforesaid, the provisions of this Act with respect to the court of survey and appeals thereto, so far as consistent with the tenor thereof, shall apply to the court of survey when acting under this section, and to appeals under this action.

Where the survey of a ship is made for the purpose of a declaration or certificate under the above-recited enactments, the person appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and in such case, if the said two persons agree, there shall be no appeal to the court of survey in pursuance of this section.

§ 603. The penalty for proceeding to sea without a certificate of clearance is prescribed by the Passengers Act Amendment Act, 1863,(q) as follows:

Forfeiture of ship if master proceeds to sea without certificate of clearance, &c.

13. If any passenger ship shall clear out or proceed to sea without the master having first obtained such certificate of clearance, or without his having joined in executing such bond to the crown as by the said Passengers' Act, 1855, are required, or if such ship, after having put to sea, shall put into any port or place in the United Kingdom in a damaged state, and shall leave or attempt to leave such port or place with passengers on board without the master having first obtained such certificate of clearance as is required by section fifty of the said Passengers Act, 1855, such ship shall be forfeited to the use of Her Majesty, and may be seized by any officer of the customs, if found, within two years from the commission of the offence, in any port or place in Her Majesty's dominions; and such ship shall thereupon be dealt with in the same manner as if she had been seized as forfeited for an offence incurring forfeiture under any of the laws relating to the customs: provided that it shall be lawful for [the Board of Trade] to release if [they] shall think fit, any such forfeited ship from seizure and forfeiture, on payment by the owner, charterer, or master thereof, to the use of Her Majesty, of such sum not exceeding two thousand pounds as [the Board of Trade] may by any writing under [their] hand specify.

§ 604. The Passengers Act, 1855,(r) further enacts:

Where passengers may be carried.

13. No ship shall carry passengers or cabin passengers on more than two decks; provided, that cabin passengers in a proportion not exceeding one cabin passenger for every one hundred tons of the ship's registered tonnage, or sick persons placed in a hospital, as hereinafter provided, may be carried in a poop or deck house, notwithstanding that passengers are carried on two other decks, and if passengers are carried under the poop or in any round house or deck house, such poop, round house, or deck house shall be properly built and secured to the satisfaction of the emigration officer at the port of clearance: For any breach of this enactment the master of the ship shall for each offence

(q) 26 & 27 Vict. c. 51. (r) 18 & 19 Vict. c. 119.

be liable to a penalty not exceeding five hundred pounds nor less than twenty pounds sterling.

Rules for determining the number of passengers to be carried. Space check.

14. For determining the number of passengers to be carried in any "passenger ship" the following rules shall be observed:

(2) No ship shall carry under the poop, or in the round house or deck house, or on the "upper passenger deck"(s), a greater number of passengers than in the proportion of one statute adult to every fifteen clear superficial feet of deck allotted to their use:

(3) No ship shall carry on her lower passenger (s) deck a greater number of passengers than in the proportion of one statute adult to every eighteen clear superficial feet of deck allotted to their use: Provided nevertheless, that if the height between such lower passenger deck and the deck immediately above it shall be less than seven feet, or if the apertures (exclusive of side scuttles) through which light and air shall be admitted together to the lower passenger deck shall be less in size than in the proportion of three square feet to every one hundred superficial feet of the lower passenger deck, no greater number of passengers shall be carried on such deck than in the proportion of one statute adult to every twenty-five clear superficial feet thereof:

(4) No ship, whatever be her tonnage or superficial space of "passenger decks," shall carry a greater number of passengers on the whole than in the proportion of one statute adult to every five superficial feet, clear for exercise, on the upper deck or poop, or (if secured and fitted on the top with a railing or guard to the satisfaction of the emigration officer at the port of clearance) on any round house or deck house:

(5) In the measurement of the passenger decks, poop, round house, or deck house, the space for the hospital and that occupied by such portion of the personal luggage of the passengers as the emigration officer may permit to be carried there shall be included:

Penalty.

If there shall be on board of any ship at or after the time of clearance a greater number of passengers (except by births at sea) than in the proportions respectively hereinbefore mentioned, the master of such ship shall be liable to a penalty not exceeding twenty pounds nor less than five pounds sterling for each passenger constituting such excess.

Nothing to extend to repeal 16 & 17 Vict. c. 84.

15. Provided nevertheless, that nothing in this Act contained shall extend to repeal or vary an Act passed in the session of Parliament holden in the sixteenth and seventeenth years of the reign of her present Majesty, chapter eighty-four, entitled "An Act to amend the Passengers Act, 1852, so far as relates to the Passages of Natives of Asia or Africa, and also Passages between the Island of Ceylon and certain parts of the East Indies." (t)

§ 605. With respect to the passengers' lists, the Act provides:

16. The master of every ship, whether a "passenger ship," or otherwise, carrying passengers on any voyage to which this Act extends, shall, before demanding a clearance for such ship, sign two lists,(u)

(s) *Ante*, § 600.

(t) This enables ships to carry, under certain circumstances, natives of Asia and Africa at the rate of one for every twelve superficial feet of passenger deck, and empowers the Governor of Ceylon to regulate the number of passengers to be carried on voyages from Ceylon to certain parts of India. See also as to Hong-Kong, 18 & 19 Vict. c. 104; and as to Australasia, 24 & 25 Vict. c. 52.

(u) By 26 & 27 Vict. c. 51, s. 6, in the passenger lists required by the sixteenth and seventeenth sections of the Passengers

made out according to the form contained in schedule (B.)(*x*) hereto annexed, correctly setting forth in the manner therein directed the name and other particulars of the ship, and of every passenger on board thereof; and the said lists, when countersigned by the emigration officer, where there is one at the port, shall be delivered by the master to the officer of the customs from whom a clearance of the said ship shall be demanded, and such officer shall thereupon also countersign and return to the said master one of such lists, hereinafter called "the master's list." In case of noncompliance with any of the requirements of this section on the part of the master, or if such lists shall be wilfully false, the master shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling.

Passenger lists to be delivered in duplicate by the master before clearance.

17. If at any time after such lists (*u*) shall have been signed and delivered as aforesaid any additional passenger shall be taken on board, in every such case the master shall, according to the form aforesaid, add to "the master's list" (*y*) the names and other particulars of every such additional passenger, and shall also sign a separate list, made out according to the form aforesaid, containing the names and other particulars of every such additional passenger, and such last-mentioned list, when countersigned by the emigration officer, where there is one at the port, shall, together with "the master's list" to which such addition shall have been made, be delivered to the chief officer of customs as aforesaid, and thereupon such officer shall countersign "the master's list," and shall return the same to the said master, and shall retain the separate list, and so on in like manner whenever any additional passenger or passengers may be taken on board; or if no officer of customs shall be stationed at the port or place where such additional passenger or passengers may be taken on board, the said lists shall be delivered to the officer of customs at the next port or place at which such vessel shall touch or arrive and where any such officer shall be stationed, to be dealt with as hereinbefore mentioned: Provided that when any additional passengers shall be taken on board the master shall obtain a fresh certificate from the emigration officer of the port that all the requirements of this Act have been duly complied with before the ship shall proceed to sea: In case of noncompliance with any of the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

List of passengers embarked after clearance to be delivered by master.

18. If any person shall be found on board any passenger ship with intent to obtain a passage therein without the consent of the owner, charterer, or master thereof, such person, and every person aiding and abetting him in such fraudulent intent, shall respectively be liable to a penalty not exceeding [twenty pounds] (*z*), and in default of payment, to imprisonment, with or without hard labour, for a period not exceeding three calendar months; and such person so found on board may be taken before any justice of the peace, without warrant, and such justice may summarily hear the case, and on proof of the offence convict such offender as aforesaid.

Penalty on noncompliance.

Penalty on persons found on board ships without consent of owners, &c.

§ 606. The penalty for clearing without survey is thus prescribed:

Cabin passengers to be included in passenger lists.

Act, 1855, to be delivered by the master of every ship before demanding a clearance, there shall be set forth, in addition to the other particulars required by the Passengers Act, 1855, the names of all cabin passengers on board such ships, specifying whether they respectively are under or over twelve years of age, and at what place the passengers and cabin passengers respectively are to be landed, and the Schedule B. to the said Act shall be altered accordingly.

(*x*) See *post*, § 625.

(*y*) See *ante*, § 16.

(*z*) So amended by 26 & 27 Vict. c. 51, s. 7.

All passenger ships to be surveyed before clearing out.

19. No "passenger ship"(*a*) shall clear out or proceed to sea unless she shall have been surveyed(*b*) under the direction of the emigration officer at the port of clearance, but at the expense of the owner or charterer thereof, by two or more competent surveyors to be appointed by the [Board of Trade] for each port at which there may be an emigration officer, and for other ports by the commissioners of customs, nor unless it shall be reported by such surveyors that such "passenger ship" is in their opinion seaworthy, and fit for her intended voyage. The survey shall be made before any part of the cargo is taken on board, except so much as may be necessary for ballasting the ship, and such portion of cargo if laden on board shall be shifted, if required by the emigration officer or surveyors, so as to expose to view successively every part of the frame of the ship. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling: Provided always, that in case any "passenger ship" shall be reported by any such surveyors not to be seaworthy, or not fit for her said intended voyage, the owner or charterer, if he shall think fit, may require, by writing under his hand, the emigration officer, or in his absence the chief officer of customs, to appoint three other competent surveyors, of whom two at least shall be shipwrights, to survey the said ship, at the expense(*c*) of the said owner or charterer; and the said officer shall thereupon appoint such surveyors, who shall survey the said ship, and if they shall, by an unanimous report under their hands (but not otherwise), declare the said ship to be seaworthy, and fit for her intended voyage, the said ship shall then, for the purposes of this Act, be deemed seaworthy for such voyage.

Penalty on noncompliance.

Power to owners to appeal against surveyors' report of ships not being seaworthy.

§ 607. With respect to construction, space, and accommodation, the Act proceeds:

As to the construction of beams and decks.

20. In every "passenger ship"(*d*) the beams supporting the "passenger decks" shall form part of the permanent structure of the ship: they shall be of adequate strength, in the judgment of the emigration officer at the port of clearance, and shall be firmly secured to the ship to his satisfaction. The "passenger decks" shall be at least one inch and a half in thickness, and shall be laid and firmly fastened upon the beams continuously from side to side of the compartment in which the passengers are berthed. The height between that part of any deck on which passengers are carried and the deck immediately above it shall not be less than six feet. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Arrangement and size of berths.

21. There shall not be more than two tiers of berths on any one deck in any "passenger ship,"(*d*) and the interval between the floor of the berths and the deck immediately beneath them shall not be less than six inches, nor the interval between each tier of berths and between the uppermost tier and the deck above it less than two feet six inches: the

(*a*) *Ante*, § 600, n.

(*b*) This survey is alternative with that under the Merchant Shipping Act, 1854. See 39 & 40 Vict. c. 80, s. 18; *ante*, § 596.

(*c*) By 35 & 36 Vict. c. 73, s. 15, if any surveyor, or any person employed under the authority of the Passengers Act, 1855, demands or receives directly or indirectly, otherwise than by the direction of the Board of Trade, any fee, remuneration, or gratuity whatever in respect of any of the duties performed by him under this Act or the Acts amended hereby, he shall for every such offence incur a penalty not exceeding fifty pounds.

Penalty on surveyor, &c., receiving gratuity, &c.

(*d*) *Ante* § 600, n.

berths shall be securely constructed, and of dimensions not less than six feet in length and eighteen inches in width for each statute adult, and shall be sufficient in number for the proper accommodation of all the passengers contained in the lists of passengers hereinbefore required to be delivered by the master of the ship. No part of any berth shall be placed within nine inches of any water-closet erected in the between-decks. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Single men to be berthed in a separate compartment.

22. In every "passenger ship" (*e*) all the male passengers of the age of fourteen years and upwards who shall not occupy berths with their wives shall, to the satisfaction of the emigration officer at the port of clearance, be berthed in the fore part of the ship, in a compartment divided off from the space appropriated to the other passengers by a substantial and well-secured bulkhead, without opening into, or communication with, any adjoining passenger berth, or in separate rooms if the ship be fitted with enclosed berths: not more than one passenger, unless husband and wife, or females or children under twelve years of age, shall be placed in or occupy the same berth. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

As to numbers and sexes in one berth.

Penalty.

Berths not to be removed till passengers landed.

23. No berths in a "passenger ship"(*e*) occupied by passengers during the voyage shall be taken down until forty-eight hours after the arrival of such ship at the port of final discharge, unless all the passengers shall have voluntarily quitted the ship before the expiration of that time. In case of noncompliance with any of the requirements of this section, the master of such ship shall be liable for each offence to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Space to be allotted as a hospital.

24. In every "passenger ship"(*e*) there shall be a sufficient space, properly divided off to the satisfaction of the emigration officer at the port of clearance, to be used exclusively as a hospital or hospitals for the passengers: this space shall be under the poop, or in the round house, or in any deck house which shall be properly built and secured to the satisfaction of such emigration officer, or on the upper passenger deck, and not elsewhere, and shall in no case be less than eighteen clear superficial feet for every fifty passengers which the ship shall carry. Such hospitals shall be fitted with bed-places, and supplied with proper beds, bedding, and utensils, to the satisfaction of the emigration officer at the port of clearance, and throughout the voyage kept so fitted and supplied. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Penalty.

Regulation as to construction of privies.

25. No "passenger ship"(*e*) shall clear out or proceed to sea unless fitted, to the satisfaction of the emigration officer at the port of clearance, with at least two privies, and with two additional privies on deck for every one hundred passengers on board, and in ships carrying as many as fifty female passengers, with at least two water-closets under the poop, or elsewhere on the upper deck, to the satisfaction of such emigration officer, for the exclusive use of the women and young children; all of which privies and water-closets shall be firmly constructed and maintained in a serviceable and cleanly condition throughout the voyage,

(*e*) *Ante* § 600, n.

and shall not be taken down until the expiration of forty-eight hours after the arrival of the ship at the port of final discharge, unless all the passengers sooner quit the ship; provided that such privies shall be placed in equal numbers on each side of the ship, and need not in any case exceed twelve in number. In case of noncompliance with any of the requirements of this section, the master shall be liable to a penalty for each offence not exceeding fifty pounds nor less than five pounds sterling.

As to light and ventilation.

26. No "passenger ship"(*g*) shall clear out or proceed to sea without such provision for affording light and air to the passenger decks as the circumstances of the case may, in the judgment of the emigration officer at the port of clearance, require; nor if there are as many as one hundred passengers on board, without having an adequate and proper ventilating apparatus, to be approved by such emigration officer and fitted to his satisfaction; the passengers shall, moreover, have the free and unimpeded use of the whole of each hatchway situated over the space appropriated to their use, and over each such hatchway there shall be erected such a boobyhatch or other substantial covering as shall, in the opinion of such emigration officer, afford the greatest amount of light and air, and of protection from wet, as the case will admit. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than twenty pounds.

Penalty on noncompliance.

These requirements as to space and accommodation may be modified by the Board of Trade under the Merchant Shipping Act, 1876,(*h*) which provides as follows:

Power to modify Passengers Acts as to food, space, and accommodation in emigrant ships.

20. It shall be lawful for the Board of Trade, if satisfied that the food, space, accommodation, or any other particular or thing provided in an emigrant ship for any class of passengers is superior to the food, space, accommodation, or other particular or thing required by the Passengers Act, 1855, and the Acts amending the same, to exempt such ship from any of the requirements of those Acts with respect to food, space, or accommodation, or other particular or thing, in such manner and upon such conditions as the Board of Trade may think fit.

§ 608. The Passengers Act, 1855,(*i*) further provides:

Regulations as to the carrrying of life buoys, anchors and fire engines, &c.

27. There shall likewise be on board each "passenger ship"(*k*), if proceeding to any place to the southward of the Equator, at least two chronometers, and if to any place to the northward of the Equator at least one chronometer, and on board of all "passenger ships" at least three steering and one azimuth compass, four properly fitted life buoys, kept ready at all times for immediate use, and some adequate means, to be approved by the emigration officer at the port of clearance, of making signals by night and in fogs; also a fire engine, in proper working order, and of such description and power and either with or without such other apparatus for extinguishing fire as such officer may approve; and not less than three bower anchors of such weight, and with cables of such length, size, and material, as in the judgment of such emigration officer shall be sufficient for the size of the ship. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Rules have also been made under the Merchant Shipping (Life

(*g*) *Ante* § 600 n.
(*h*) 39 & 40 Vict. c. 80.
(*i*) 18 & 19 Vict. c. 119.
(*k*) *Ante* § 600, n.

Saving Appliances) Act, 1888,(*l*) as to boats, life jackets, and other appliances for saving life at sea, which every owner and every master of a British ship are bound to see provided for their ship, under heavy penalties.(*m*)

By the Passengers Act, 1855 :(*n*)

Regulations as to carrying an efficient crew.

28. Every "passenger ship"(*o*) shall be manned with an efficient crew for her intended voyage, to the satisfaction of the emigration officer from whom a clearance of such ship may be demanded, and the strength of the crew shall not be diminished, nor any of the men changed, when once passed by such emigration officer, without his consent in writing, or that of the [superintendent of Mercantile Marine offices] of the port of clearance, as required by the laws then in force regulating the shipping of seamen on board merchant vessels. Where the consent of the [superintendent] is obtained, it shall, within twenty-four hours thereafter, be lodged with such emigration officer. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds: Provided, that if the emigration officer shall consider the crew inefficient, and the owner or charterer of the ship shall thereupon appeal in writing to the [Board of Trade,] [the Board of Trade] shall, at the expense of the appellant, appoint two other emigration officers or two competent persons to examine into the matter, and the unanimous opinion of the persons so appointed, expressed under their hands, shall be conclusive on the point.

§ 609. Certain articles are prohibited as cargo on board passenger ships:

29. No "passenger ship"(*o*) shall clear out or proceed to sea if there shall be on board as cargo, horses,(*p*) cattle,(*p*) gunpowder,(*q*)

(*l*) 51 & 52 Vict. c. 24.

(*m*) See *ante* §§ 108, 109, and 39 & 40 Vict. c. 80, s. 21, *ante* § 594, Appx. No. 3.

(*n*) 18 & 19 Vict. c. 119.

(*o*) *Ante* § 600, n.

Horses and cattle may be carried on passenger ships under certain conditions.

(*p*) By 26 & 27 Vict. c. 51, s. 8, notwithstanding the prohibition contained in the twenty-ninth section of the said Passengers Act, 1855, horses and cattle may be carried as cargo in passenger ships, subject to the following conditions:

(1) That the animals be not carried on any deck below the deck on which passengers are berthed, nor in any compartment in which passengers are berthed, nor in any adjoining compartment, except in a ship built of iron, and of which the compartments are divided off by water-tight bulkheads extending to the upper deck.

(2) That clear space on the spar or weather deck be left for the use and exercise of the passengers, at the rate of at least ten superficial feet for each statute adult.

(3) That no greater number of passengers be carried than in the proportion of fifteen to every one hundred tons of the ship's registered tonnage.

(4) That in passenger ships of less than five hundred tons registered tonnage not more than two head of large cattle be carried, nor in passenger ships of larger tonnage more than one additional head of such cattle for every additional two hundred tons of the ship's registered tonnage, nor more in all in any passenger ship than ten head of such cattle; the term "large cattle" shall include both sexes of horned cattle, deer, horses, and asses; four sheep of either sex, or four female goats, shall be equivalent to, and may, subject to the same conditions, be carried in lieu of one head of large cattle.

Definition of term "large cattle."

(5) That proper arrangements be made, to the satisfaction of the emigration officer at the port of clearance, for the housing, maintenance, and cleanliness of the animals, and for the stowage of their fodder.

Dogs and pigs.

(6) Not more than six dogs, and no pigs or male goats, shall be conveyed as cargo in any passenger ship; for any breach of this prohibition, or of any of the above conditions, the owner, charterer, and master of the ship, or any of them, shall be liable for each offence to a penalty not exceeding three hundred pounds nor less than five pounds.

(*q*) This section applies to every ex-

Certain articles prohibited as cargo and ballast.

Stowage of cargo, stores, and luggage to be approved by emigration officer.

vitriol, lucifer matches, guano, or green hides, nor if there shall be on board any other article or number of articles, whether as cargo or ballast, which by reason of the nature or quantity or mode of stowage thereof shall, either singly or collectively, be deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers or the safety of the ship: no part of the cargo, or of the passengers' luggage, or of the provisions, water, or stores, whether for the use of the passengers or of the crew, shall be carried on the upper deck or on the "passenger decks," unless in the opinion of such emigration officer it shall be so placed as not to impede light or ventilation, nor interfere with the comfort of the passengers; nor unless the same be stowed and secured to the satisfaction of such emigration officer, and the space occupied thereby or rendered, in the opinion of such officer, unavailable for the accommodation of the passengers, shall (unless occupied by passengers' luggage) be deducted in calculating the space by which, under the provisions of this Act, the number of passengers is regulated. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master, or any of them, shall for each offence be liable to a penalty not exceeding three hundred pounds nor less than five pounds sterling.(*r*)

Computation of Length of Voyages.

§ 610. The length of voyage for the purposes of the Passengers Acts is to be computed as follows:

Computation of voyages.

30. For the purposes of this Act, the length of the voyage for a "passenger ship"(*s*) proceeding from the United Kingdom to the under-mentioned places respectively shall be determined by the following scale: (that is to say)(*t*). . . . . For the like purposes, the [Board of Trade] from time to time, by any notice in writing, published in the *London Gazette*, may nevertheless declare what shall be deemed to be the length of voyage from the United Kingdom to any of the said hereinbefore mentioned places, or to any other part or place whatsoever, and may fix such different lengths of voyage as they may think reasonable for such different descriptions of vessels as aforesaid.(*t*)

Provisions and Medicines.

§ 611. The regulations with respect to provisions and medicines are as follows:

Before clearance, provisions and water to be surveyed.

31. Before any "passenger ship" (*s*) shall be cleared out the emigration officer at the port of clearance shall survey or cause to be surveyed by some competent person the provisions and water by this Act required to be placed on board for the consumption of the passengers, and shall satisfy himself that the same are of a good and wholesome quality (*y*) and in a sweet and good condition, and are in

plosive within the meaning of the Explosives Act, 1875. See 38 Vict. c. 17, s. 42, *ante* § 258, n.

(*r*) But by 33 & 34 Vict. c. 95 (The Passengers Amendment Act, 1870), s. 3, "[The Board of Trade] may, by order under their hand, authorise the carriage as cargo in any passenger ship (subject to such conditions and directions as may be specified in the order) of naval and military stores for the public service, and such stores may, notwithstanding anything contained in the principal Act (18 & 19 Vict. c. 119), be carried accordingly in such passenger ship.

"Such order shall be addressed to the emigration officer or person performing the duties of emigration officer at the port of clearance, and shall be by him countersigned and delivered to the master of the passenger ship to which it refers, and shall be delivered up by the master to the chief officer of customs at the port where the stores are discharged.

"The master shall comply with all the conditions and directions specified in the order, and noncompliance therewith shall be deemed noncompliance with the requirements of the said section twenty-nine of the principal Act."

(*s*) *Ante* § 600, n.

(*y*) See also 17 & 18 Vict. c. 104, s. 221, *ante* § 524.

quantities sufficient to secure throughout the voyage the issues hereinafter prescribed :(z) in addition to the allowance of pure water for the use of each passenger there shall be shipped for cooking purposes an additional supply of pure water after the rate of at least ten gallons for

(t) The following scale was substituted for the one originally prescribed by the Act, by a notice of the Board of Trade of June 19th, 1891.

—	If the Ship be propelled by Sails alone or by Steam Power not sufficient without the aid of Sails to propel the Ship at the Rate of at least Five Statute Miles an Hour. (1)	If the Ship be propelled either wholly or in aid of Sails by Steam Engines of not less power than sufficient without the aid of Sails to propel the Ship at the Rate of at least Five Statute Miles an Hour. (2)	If the Ship be propelled either wholly or in aid of Sails by Steam Engines of not less Power than sufficient without the aid of Sails to propel the Ship at the Rate of at least Ten Statute Miles an Hour for passages other than by the Suez Canal. (3)	If the Ship be propelled either wholly or in aid of Sails by Steam Engines of not less Power than sufficient without the aid of Sails to propel the Ship at the Rate of at least Ten Statute Miles an Hour for Passages by the Suez Canal. (4)	If the Ship has double screws and is propelled either wholly or in aid of Sails by Steam Engines of not less Power than sufficient without the aid of Sails to propel the Ship at the Rate of at least Fourteen Statute Miles an Hour. (5)	If the Ship has double screws and is propelled either wholly by in aid of Sails or Steam Engines of not less Power than sufficient without the aid of Sails to propel the Ship at the Rate of at least 14 Statute Miles an Hour for Passages by the Suez Canal. (6)
	Days.	Days.	Days.	Days.	Days.	Days.
1. To North America (except to the West Coast thereof) :—						
For ships clearing out between the 16th day of January and the 14th day of October, both days inclusive	70	40	32	—	24	—
For ships clearing out between the 15th dry of October and the 15th day of January, both days inclusive	80	45	37	—	28	—
2. To the Coast of Africa South of the Equator, or to the Falkland Islands, or to any part of the East Coast of South America southward of the twenty-fifth degree of South Latitude	105	65	65	—	49	—
3. To Western Australia	120	85	80	70	60	53
4. To Queensland	150	90	90	75	68	56
5. To any other of the Australian Colonies	140	90	85	75	64	56
6. To New Zealand	150	90	90	85	68	64
7. To the Western Coast of America, north of the fortieth degree of North Latitude, and the Islands adjacent thereto	182	96	96	—	72	—

(z) See 35 *post* § 612.

Provisions for the crew not to be inferior to those for the passengers.

every day of the prescribed length of voyage (*zz*) for every one hundred statute adults on board; and also for the use of the crew and all other persons on board an ample supply of wholesome provisions and pure water, which shall not be inferior in quality to the supply of the same articles provided for the consumption of the passengers: all such water, provisions, and stores shall be provided and properly stowed away in accordance with the requirements of the twenty-ninth section of this Act, by and at the expense of the owner, charterer, or master of the ship; and if a clearance be obtained for any "passenger ship" (*a*) which shall not be then stored with the requisite quantities of such water, provisions, and stores as are required by this Act, the owner, charterer, or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding three hundred pounds sterling.(*b*)

Penalty.

Power to emigration officer to reject and mark bad provisions, and direct the same to be landed, and if reshipped parties liable to a penalty.

32. If such emigration officer shall consider that any of the provisions or stores or water are not of a good and wholesome quality, or are not in a sweet and good condition, it shall be lawful for him to reject and mark the same, or the packages or vessels in which they are contained, and to direct the same to be landed or emptied; and if such rejected provisions or stores or water shall not thereupon be forthwith landed or emptied, or if, after being landed, the same or any part thereof shall be reshipped in such ship, the owner, charterer, or master thereof, or any of them, or if reshipped in any other "passenger ship" (*a*) the person causing the same to be reshipped, shall for each offence be liable to a penalty not exceeding one hundred pounds sterling.

Water tanks or casks to be approved by emigration officer.

33. In every "passenger ship" (*a*) the water to be laden on board, as hereinbefore required, shall be carried in tanks or in casks to be approved by the emigration officer at the port of clearance. When casks are used, they shall be sweet and tight, of sufficient strength, and if of wood properly charred inside, and shall not be capable severally of containing more than three hundred gallons each: the staves of the water casks shall not be made of fir, pine, or soft wood. In case of noncompliance with any of the requirements of this section the owner, charterer, or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds.(*b*)

Provisions for touching at intermediate ports to fill up water.

34. If any "passenger ship" (*a*) shall be intended to call at any intermediate port or place during the voyage, for the purpose of taking in water, and if an engagement to that effect shall be inserted in the bond mentioned in the sixty-third section of this Act (*c*) then it shall be sufficient to place on board at the port of clearance such supply of water as may be requisite, according to the rate hereinafter mentioned, for the voyage of the said ship to such intermediate port or place, subject to the following conditions: (that is to say)

First, That the emigration officer signify his approval in writing of the arrangement, to be carried amongst the papers of the ship, and exhibited to the chief officer of customs, or to Her Majesty's consular officer, as the case may be, at such intermediate port or place, and to be delivered to the chief officer of customs, or to Her Majesty's consular officer, as the case may be, on the arrival of the said ship at the final port or place of discharge:

Secondly, That if the length of either portion of the voyage, whether to such intermediate port or place, or from such intermediate port or place to the final port or place of discharge, be not prescribed in or under the provisions of this Act, the emigration officer at the

(*zz*) *Ante* sec. 30, § 610.
(*a*) *Ante* § 600, n.
(*b*) See 39 & 40 Vict. c. 80, s 20, *ante* § 607.
(*c*) See *post* § 620, and for form of bond § 625.

port of clearance shall in every such case declare the same in writing to be carried amongst the papers of the ship:

Thirdly, That the ship shall have on board at the time a clearance is demanded tanks or water casks, of the description hereinbefore mentioned, sufficient for stowing the quantity of water required for the longest of such portions of the voyage as aforesaid.(*d*)

§ 612. Dietary scales are thus prescribed by the Act:

Dietary scales of provisions.

35. The master of every "passenger ship" (*e*) shall, during the voyage, including the time of detention at any place before the termination thereof, issue to each passenger, or where the passengers are divided into messes, to the head man for the time being of each mess on behalf and for the use of all the members thereof, an allowance of pure water and sweet and wholesome provisions, of good quality, according to the following dietary scale: (that is to say) if the length of the voyage, computed as hereinbefore mentioned,(*ee*) shall not exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "A"; but if the length of the voyage, computed as aforesaid, shall exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "B."

WATER.

Three quarts of water daily to each statute adult, exclusive of the quantity hereinbefore specified as necessary for cooking the articles hereinafter required to be issued in a cooked state.

PROVISIONS.

Weekly, per statute adult:

	SCALE A. For voyages not exceeding 84 days for sailing vessels, or 50 days for steamers.		SCALE B. For voyages exceeding 84 days for sailing vessels, or 50 days for steamers.	
	lbs.	oz.	lbs.	oz.
Bread or biscuit, not inferior in quality to navy biscuit	3	8	3	8
Wheaten flour	1	0	2	0
Oatmeal	1	8	1	0
Rice	1	8	0	8
Peas	1	8	1	8
Potatoes	2	0	2	0
Beef	1	4	1	4
Pork	1	0	1	0
Tea	0	2	0	2
Sugar	1	0	1	0
Salt	0	2	0	2
Mustard	0	½	0	½
Black or white pepper, ground	0	¼	0	¼
Vinegar	one gill.		one gill.	
Lime juice(*f*)	—		0	6
Preserved meat	—		1	0
Suet	—		0	6
Raisins	—		0	8
Butter	—		0	4

(*d*) See 39 & 40 Vict. c. 80, s. 20, *ante* § 607.

(*e*) *Ante* § 600, n.

(*ee*) *Ante* § 610, note (*t*).

Issue of lime juice.

(*f*) By 26 & 27 Vict. c. 51, s. 9, the requirements of the thirty-fifth section of the said "Passengers Act, 1855," that six ounces of lime juice

SUBSTITUTIONS.(*g*)

Substitutions at the following rates may, at the option of the master of any "passenger ship,"(*h*) be made in the above dietary scales, that is to say:—

1 lb. of preserved meat . . .	for 1 lb. of salt pork or beef.
1 lb. of flour or of bread or biscuit, or ½ lb. of beef or of pork . . .	for 1¼ lb. of oatmeal, or 1 lb. of rice or 1 lb. of peas.
1 lb. of rice	for 1¼ lb. of oatmeal, or *vice versâ*.
¼ lb. of preserved potatoes . .	for 1 lb. of potatoes.
10 oz. of currants	for 8 oz. of raisins.
3½ oz. of cocoa or of coffee, roasted and ground	for 2 oz. of tea.
¾ lb. of treacle	for ½ lb. of sugar.
1 gill of mixed pickles . . .	for 1 gill of vinegar.

Penalty on noncompliance.

Provided that the substituted articles be set forth in the contract tickets of the passengers. In case of noncompliance with any of the requirements of this section, the master of the ship shall be liable for each offence to a penalty not exceeding fifty pounds sterling.

Size of messes.

36. The messes into which the passengers in any passenger ship may be divided shall not consist of more than ten statute adults in each mess, and members of the same family, whereof one at least is a male adult, shall be allowed to form a separate mess. The provisions according to the above scale shall be issued, such of them as require to be cooked in a properly cooked state, daily before two o'clock in the afternoon, to the head person for the time being of each mess on behalf and for the use of the members thereof. The first of such issues shall be made before two o'clock in the afternoon of the day of embarkation to or for such passengers as shall be then on board. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds.(*i*)

Provisions to be issued daily, and articles which require cooking to be cooked.

Power to Board of Trade to authorise an alternative dietary scale.

37. The [Board of Trade] may from time to time, by any notice for that purpose published in the *London Gazette*, authorise the issue of provisions in any "passenger ship"(*h*) according to such other dietary scale (besides that hereinbefore prescribed) as shall in [its] opinion contain in the whole an equivalent amount of wholesome nutriment; and after the publication of such notice it shall be lawful for the master of any "passenger ship"(*h*) to issue provisions to his passengers either according to the scale by this Act prescribed, or according to the scale authorised by the [Board of Trade], whichever may have been set forth in the contract tickets of the passengers:(*k*) Provided always, that

should be issued weekly to each statute adult on voyages exceeding eighty-four days in duration for sailing vessels, or fifty days for steamers, shall be confined to the period when the ship shall be within the tropics; during the other portions of the voyage the issue of lime juice shall be at the discretion of the medical practitioner on board; or, if there be no such practitioner on board, at the discretion of the master of the ship. And see 30 & 31 Vict. c. 124, ss. 4–6, *ante* § 525.

(*g*) By 26 & 27 Vict. c. 51, s. 10, in addition to the substitutions in the dietary scales specified in the thirty-fifth section of the said "Passengers Act, 1855," soft bread baked on board may be issued, at the option of the master of any passenger ship, in lieu of the following articles, and in the following proportions: (that is to say) one pound and a quarter of a pound of such soft bread may be issued in lieu of one pound of flour, or of one pound of biscuit, or of one pound and a quarter of a pound of oatmeal, or of one pound of rice, or of one pound of peas.

(*h*) *Ante* § 600, n.

(*i*) See 39 & 40 Vict. c. 80, s. § 20, *ante* § 607.

(*k*) Such a notice was published in the *London Gazette*, April 29th, 1856, con-

the [Board of Trade] by such notice as aforesaid may revoke or alter any such dietary scale authorised by them as occasion may require.(*l*)

Power to [Board of Trade] to alter dietary scale.

§ 613. In certain cases passenger ships are bound to carry stewards, cooks, and interpreters:

As to passenger stewards.

38. Every "passenger ship"(*m*) carrying as many as one hundred passengers shall have on board a seafaring person, who shall be rated in the ship's articles as passengers' steward, and who shall be approved by the emigration officer at the port of clearance, and who shall be employed in messing and serving out the provisions to the passengers, and in assisting to maintain cleanliness, order, and good discipline among the passengers, and who shall not assist in any way in navigating or working the ship. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.(*l*)

Penalty on noncompliance.

39. Every "passenger ship"(*m*) carrying as many as one hundred passengers shall also have on board a seafaring man, or if carrying more than three hundred "statute adults," two seafaring men, to be rated and approved as in the case of passengers' stewards, who shall be employed in cooking the food of the passengers: A convenient place for cooking shall also be set apart on deck; and a sufficient cooking apparatus, properly covered in and arranged, shall be provided, to the satisfaction of the said emigration officer, together with a proper supply of fuel adequate, in his opinion, for the intended voyage. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.(*l*)

As to passenger cooks and cooking apparatus.

Penalty on noncompliance.

40. In every foreign "passenger ship"(*m*) in which as many as one half of the passengers shall be British subjects, unless the master and officers, or not less than three of them, shall understand and speak intelligibly the English language, there shall be carried, where the number of passengers does not exceed two hundred and fifty, one person, and where it exceeds two hundred and fifty, two persons, who understand and speak intelligibly the language spoken by the master and crew and also the English language, and such persons shall act as interpreters, and be employed exclusively in attendance on the passengers, and not in the working of the ship; and no such ship shall clear out or proceed to sea without having such interpreter or interpreters on board; and the master of any such foreign ship clearing out or proceeding to sea without having such interpreter or interpreters on board as aforesaid shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

In what cases interpreters to be carried.

Penalty.

§ 614. As to medical practitioners and medicines the Act provides:

41. Every "passenger ship"(*m*) shall in the following cases(*n*) carry a duly qualified medical practitioner, who shall be rated on the ship's articles:

In what cases a medical man must be carried.

taining a dietary scale C. alternative with scale B. of s. 35, *ante* § 612. See Appx. No. 13.

(*l*) See 39 & 40 Vict. c. 80, s. 20, *ante* § 607.

(*m*) *Ante* § 600, n.

(*n*) By Order in Council of Aug. 9th, 1866, every passenger ship carrying more than fifty passengers shall, whatever be the duration of the voyage, being a voyage within s. 4 of the Passengers Act, 1855, carry a duly qualified medical practitioner. And see 17 & 18 Vict. c. 104, s. 230, *ante* § 526.

First, when the duration of the intended voyage, as hereinbefore computed,(*nn*) exceeds eighty days in the case of ships propelled by sails, and forty-five days in the case of ships propelled by steam, and the number of passengers on board exceeds fifty:

Second, whenever the number of persons on board (including cabin passengers, officers, and crew) exceeds three hundred:

Penalty.

In case of noncompliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than twenty pounds sterling.

Qualifications of medical men.

42. No medical practitioner shall be considered to be duly qualified for the purposes of this Act unless authorised by law to practise in some part of Her Majesty's dominions, or, in the case of a foreign ship, in the country to which such ship may belong, as a physician, surgeon, or apothecary, nor unless his name shall have been notified to the emigration officer at the port of clearance, and shall not be objected to by him, nor unless he shall be provided with proper surgical instruments to the satisfaction of such officer: Provided nevertheless, that where the majority of the passengers in any "passenger ship,"(*o*) or as many as three hundred, are foreigners, any medical practitioner who may be approved by such emigration officer may be carried therein. In case any person shall proceed, or attempt to proceed as medical practitioner in any "passenger ship"(*o*) without being duly qualified as aforesaid, or contrary to any of the requirements of this section, such person and all persons aiding or abetting therein shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than ten pounds sterling.

Penalty.

Medicines and medical comforts.

43. The owner or charterer of every "passenger ship"(*o*) shall provide (*p*) for the use of the passengers a supply of medicines, medical comforts, instruments, and other things proper and necessary for diseases and accidents incident to sea voyages, and for the medical treatment of the passengers during the voyage, including an adequate supply of disinfecting fluid or agent, together with printed or written directions for the use of the same respectively; and such medicines, medical comforts, instruments, and other things (*q*) shall, in the judgment of the emigration officer at the port of clearance, be good in quality and sufficient in quantity for the probable exigencies of the intended voyage, and shall be properly packed and placed under the charge of the medical practitioner, when there is one on board, to be used at his discretion. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling. (*r*)

Penalty.

Medical inspection of passengers and medicines, &c.

44. No "passenger ship,"(*o*) except as hereinafter provided, shall clear out or proceed to sea until some medical practitioner, to be appointed by the emigration officer at the port of clearance, shall have inspected such medicines, medical comforts, and other articles as are required to be supplied by the last preceding section, and also all the passengers and crew (*s*) about to proceed in the ship, and shall have certified to the said emigration officer that the said ship contains a

(*nn*) *Ante* § 610, note (*t*).

(*o*) *Ante* § 600, n.

(*p*) See 30 & 31 Vict. c. 124, ss. 4–7.

(*q*) The Board of Trade have issued lists of surgical instruments and medicines which should be provided and taken out by passenger ships. See Appendix, Nos. 8 (B) and (C).

(*r*) See 39 & 40 Vict. c. 80, s. 20, *ante* § 607.

(*s*) See 30 & 31 Vict. c. 124, s. 10, *ante* § 527

sufficient supply of medicines, medical comforts, disinfecting fluid or agent, instruments, and other things requisite for the medical treatment of the passengers during the intended voyage, nor until such medical practitioner shall have certified and the said emigration officer shall be satisfied that none of the passengers or crew appear, by reason of any bodily or mental disease, unfit to proceed, or likely to endanger the health or safety of the other persons about to proceed in such vessel. Such medical inspection of the passengers shall take place either on board the vessel, or, at the discretion of the said emigration officer, at such convenient place on shore before embarkation as he may appoint; and the master, owner, or charterer of the ship shall pay to such emigration officer a sum at the rate of twenty shillings for every hundred persons so examined: Provided also, that in case the emigration officer on any particular occasion shall be unable to obtain the attendance of a medical practitioner, it shall be lawful for the master of any such ship to clear out and proceed to sea, on receiving from the said emigration officer written permission for the purpose. In case any "passenger ship" shall clear out or proceed to sea without having complied with all the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling.

Penalty.

45. If the emigration officer at any port shall be satisfied that any person on board or about to proceed in any "passenger ship" is by reason of sickness unfit to proceed, or is for that or for any other reason likely to endanger the health or safety of the other persons on board, the said emigration officer shall prohibit the embarkation of such person, or if embarked shall require him to be relanded; and if such emigration officer shall be satisfied that it is necessary, for the purification of the ship or otherwise, that all or any of the passengers or persons on board should be relanded, the said emigration officer may require the master of the ship to reland all such passengers or persons, and the master shall thereupon reland such passengers or persons, with so much of their effects and with such members of their families as cannot in the judgment of such emigration officer be properly separated from them; and in case of non-compliance with any of the requirements of this section, the master, owner, or charterer of the ship shall for each offence be liable to a penalty not exceeding two hundred pounds nor less than ten pounds; and any passenger or person embarking after such prohibition, or refusing or neglecting to leave the ship when so directed to be relanded, shall be liable to be summarily removed, and to a penalty not exceeding forty shillings for each day which he shall remain on board after the giving of such prohibition or direction.

Relanding of passengers on account of sickness or for purifying ships.

Penalty.

Rights of Passengers in case of Casualty.

§ 615. Where a passenger is relanded on account of sickness he is entitled to a return of his passage money, and to subsistence money during the period of detention:

46. Any person so relanded on account of the sickness of himself or of any member of his family who may not be re-embarked and finally sail in such ship, or any emigration officer on his behalf, shall be entitled to recover, by summary process, the whole of the monies which may have been paid by or on account of such passenger for his passage, and that of the members of his family so relanded, from the party to whom the same may have been paid, or from the owner, charterer, or

As to return of passage money to passengers relanded on account of sickness, &c.

master of such ship, or any of them, at the option of such passenger or emigration officer.(u)

Subsistence money to be paid to passengers relanded.

47. The master of any "passenger ship"(x) from which the whole or any part of the passengers shall be relanded on account of any of the reasons mentioned in Section 45 shall pay to each passenger so relanded (or if he shall be lodged and maintained in any hulk or establishment under the superintendence of the [Board of Trade], then to the emigration officer at the port) subsistence money at the rate of one shilling and sixpence a day for each statute adult until he shall be re-embarked or decline or neglect to proceed, or until his passage-money, if recoverable under the forty-sixth section of this Act, be returned to him.

§ 616. And the same rule holds good where passages are not provided for passengers according to contract:

Return of passage money and compensation to passengers where passages not provided for them according to contract.

48. If any person by whom or on whose behalf any contract shall have been made for a passage in any ship proceeding on any voyage to which this Act extends, shall be at the place of embarkation before six o'clock in the afternoon of the day of embarkation appointed in such contract, and shall, if required, pay the stipulated passage-money or the unpaid balance thereof, and if from any cause whatever, other than his own refusal, neglect, or default, or the prohibition of an emigration officer, as hereinbefore mentioned, or the requirements of any order in Council, such passenger shall not be received on board before that hour, or if from any such cause as aforesaid any passenger who shall have been received on board shall not either obtain a passage in such ship to the port at which he may have contracted to land, or, together with all the immediate members of his family who may be included in such contract, obtain a passage to the same port in some other equally eligible ship to sail within ten days from the expiration of the said day of embarkation, and in the meantime be paid subsistence money from the time and at the rate hereinafter mentioned, such passenger, or any emigration officer on his behalf, shall be entitled to recover either from the party to whom or on whose account the same may have been paid, or (in case such contract shall have been made with the owner, charterer, or master of such ship, or with any person acting on behalf or by the authority of any of them respectively) from such owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer, all monies which shall have been paid by or on account of such passengers for such passage, and also such further sum not exceeding ten pounds in respect of each such passage as shall, in the opinion of the justices of the peace who shall adjudicate on the complaint, be a reasonable compensation for the loss or inconvenience occasioned to such passenger by the loss of such passage.

Subsistence in case of detention.

49. If any ship, whether a "passenger ship" (x) or otherwise, shall not actually put to sea, and proceed on her intended voyage before three o'clock in the afternoon of the day next after the said day of embarkation, the owner, charterer, or master of such ship, or his or their agent, or any of them, at the option of such passenger or emigration officer,

(u) By 26 & 27 Vict. c. 51, s. 11, the forty-sixth section of the said Passengers Act, 1855, shall be applicable to cabin as well as to other passengers landed on account of sickness; and the passage money of all cabin or other passengers so landed may be recovered in the manner pointed out in the said Act, upon the delivery up of their contract tickets, and notwithstanding that the ship may not have sailed: provided always, that in the case of cabin passengers so landed one half only of their passage money shall be recoverable.

(x) *Ante* § 600, n.

shall pay to every passenger entitled to a passage (or if such passenger shall be lodged and maintained in any establishment under the superintendence of the [Board of Trade], then to the emigration officer at the port of embarkation) subsistence money after the rate of one shilling and sixpence for each statute adult in respect of each day of delay for the first ten days, and afterwards three shillings a day for each statute adult, until the final departure of such ship on such voyage, and the same may be recovered in the manner hereinafter mentioned: Provided that if the passengers be maintained on board in the same manner as if the voyage had commenced, no such subsistence money shall be payable for the first two days next after the said day of embarkation, nor if they shall be maintained shall such subsistence money be payable if the ship be unavoidably detained by wind or weather, or by any cause not attributable in the opinion of the emigration officer to the act or default of the owner, charterer, or master.

Ships putting back to replenish provisions, &c.

50. If any "passenger ship"(*y*) shall, after clearance, be detained in port for more than seven days, or shall put into or touch at any port or place in the United Kingdom, she shall not put to sea again until there shall have been laden on board, at the expense of the owner, charterer, or master of such ship, such further supply of pure water, wholesome provisions of the requisite kinds and qualities, and medical comforts and stores, as may be necessary to make up the full quantities of those articles hereinbefore required to be laden on board for the intended voyage,(*z*) nor until any damage she may have sustained shall have been effectually repaired, nor until the master of the said ship shall have obtained from the emigration officer or his assistant, or where there is no such officer, or in his absence, from the officer of customs at such port or place, a certificate to the same effect as the certificate hereinbefore required to enable the ship to be cleared out;(*a*) and in case of any default herein the said master shall be liable, on conviction, as hereinafter mentioned, to a penalty not exceeding one hundred pounds nor less than fifty pounds sterling: And if the master of any "passenger ship"(*y*) so putting into or touching at any port or place as aforesaid shall not within twelve hours thereafter report, in writing, his arrival, and the cause of his putting back, and the condition of his ship, and of her stores and provisions, to the emigration officer, or, as the case may be, to the officer of customs at the port, and shall not produce to such officer the official or "master's list" of passengers,(*b*) such master shall for each offence be liable to a penalty not exceeding twenty pounds nor less than two pounds sterling.

Penalty on master for default.

Ships putting back to be reported to emigration officer.

Penalty on master for neglect.

Secretary of State, &c., may pay expenses of taking off passengers at sea.

§ 617. In case of wreck or casualty the following provisions have effect with respect to forwarding passengers to their destination:

52. If the passengers or cabin passengers of any "passenger ship"(*c*) shall be taken off from any such "passenger ship,"(*c*) or shall be

(*y*) *Ante* § 600, n.

(*z*) See *ante* ss. 31, 43, §§ 611, 614, and 39 & 49 Vict. c. 80, s. 20, *ante* § 607.

(*a*) See *ante* s. 11, § 601, and as to appeal against refusal of certificate, 39 & 40 Vict. c. 80, s. 14, *ante* § 602.

(*b*) See *ante* ss. 16, 17, § 605.

(*c*) By 52 & 53 Vict. c. 29, s. 2, for the purposes of the 52nd section of the Passengers Act, 1855, and the 15th section of the Passengers Act Amendment Act, 1863, the term "passenger ship" shall signify every description of sea-going[1] vessel carrying one or more passenger or passengers on any voyage from any place in Her Majesty's dominions to any place whatever.

[1] As to the meaning of "sea-going", see *Salt Union* v. *Wood*, (1873) 1 Q. B. 370.

picked up at sea from any boat, raft, or otherwise, it shall be lawful, if the port or place to which they shall be conveyed shall be in the United Kingdom, for one of Her Majesty's principal Secretaries of State, or if in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorised by him for the purpose, or if in any foreign country, for Her Majesty's consular officer, at such port or place therein, to defray all or any part of the expenses thereby incurred.(*d*)

By the Passengers Act Amendment Act, 1863 :(*e*)

In case of wreck or damage in or near United Kingdom, passengers to be provided with a passage by some other vessel, and maintained in the meantime.

14. If any passenger ship shall be wrecked, or otherwise rendered unfit to proceed on her intended voyage, while in any port of the United Kingdom, or after the commencement of the voyage, and if the passengers, or any of them, shall be brought back to the United Kingdom, or if any passenger ship shall put into any port or place in the United Kingdom in a damaged state, the master, charterer, or owner shall, within forty-eight hours thereafter, give to the nearest emigration officer, or in the absence of such officer to the chief officer of customs, a written undertaking to the following effect: (that is to say) if the ship shall have been wrecked, or rendered unfit as aforesaid to proceed on her voyage, that the owner, charterer, or master thereof shall embark and convey the passengers in some other eligible ship, to sail within six weeks from the date thereof, to the port or place for which their passages respectively had been previously taken ; and if the ship shall have put into port in a damaged state, then that she shall be made seaworthy, and fit in all respects for her intended voyage, and shall, within six weeks from the date of such undertaking, sail again with her passengers ; in either of the above cases the owner, charterer, or master shall, until the passengers proceed on their voyage, either lodge or maintain them on board in the same manner as if they were at sea, or pay to them subsistence money after the rate of one shilling and sixpence a day for each statute adult, unless the passengers shall be maintained in any hulk or establishment under the superintendence of the [Board of Trade] mentioned in the said Passengers Act, 1855, in which case the subsistence money shall be paid to the emigration officer at such port or place. If the substituted ship or damaged ship, as the case may be, shall not sail within the time prescribed as aforesaid, or if default shall be made in any of the requirements of this section, such passengers respectively, or any emigration officer on their behalf, shall be entitled to recover, by summary process, as in the said Passengers Act, 1855, is mentioned,(*f*) all monies which shall have been paid by or on account of such passengers or any of them for such passage, from the party to whom or on whose account the same may have been paid, or from the owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer: Provided that the said emigration officer may, if he shall think it necessary, direct that the passengers shall be removed from such damaged "passenger ship"(*g*) at the expense of the master thereof ; and if after such direction any passenger shall refuse to leave such ship, he shall be liable to a penalty not exceeding forty shillings, or to imprisonment not exceeding one calendar month.

Power to remove passengers from damaged ship; Penalty on passengers refusing.

Governors or consuls may send on passengers if the master of the ship fail to do so.

15. If any passenger or cabin passenger of any passenger ship (*h*) shall, without any neglect or default or his own, find himself within any colonial or foreign port or place other than that for which the ship was

(*d*) See 26 & 27 Vict. c. 51 s. 16 *post*.
(*e*) 26 & 27 Vict. c. 51.
(*f*) See 18 & 19 Vict. c. 119, ss. 84–94, *post* § 622.
(*g*) *Ante* § 600, n.
(*h*) *Ante* note (*c*).

originally bound, or at which he or the [Board of Trade] or any public officer or other person on his behalf, may have contracted that he should land, it shall be lawful for the governor of such colony, or for any person authorised by him for the purpose, or for Her Majesty's consular officer at such foreign port or place, as the case may be, to forward such passenger to his intended destination, unless the master of such ship shall, within forty-eight hours of the arrival of such passenger, give to the governor, or consular officer, as the case may be, a written undertaking to forward or carry on, within six weeks thereafter, such passenger or cabin passenger to his original destination, and unless such master shall accordingly forward or carry him on within that period.

Expenses incurred under the two preceding sections to be a debt due to the Crown.

16. All expenses incurred under the last preceding section, or under the fifty-second section of "The Passengers Act, 1855," or either of them, by or by the authority of such Secretary of State, governor, or consular officer, or other person, as therein respectively mentioned, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions, and stores, shall become a debt to Her Majesty and her successors from the owner, charterer, and master of such ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts; and a certificate in the form in Schedule (A)(*i*) hereto annexed, or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Secretary of State, governor, or consular officer (as the case may be), stating the total amount of such expenses, shall in any suit or other proceeding for the recovery of such debt be received in evidence without proof of the handwriting or of the official character of such Secretary of State, governor, or consular officer, and shall be deemed sufficient evidence of the amount of such expenses, and that the same were duly incurred, nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant shall specially plead and duly prove that such certificate is false or fraudulent, or shall specially plead and prove any facts showing that such expenses were not duly incurred under the provisions of this Act, and of the said "Passengers Act, 1855," or either of them: Provided nevertheless, that

(*i*) SCHEDULE (A).

Form of Governor's or Consul's Certificate of Expenditure in the Case of Passengers shipwrecked, &c.

I hereby certify that, acting under and in conformity with the provisions of the British "Passengers Act, 1855," and of the "Passengers Act Amendment Act, 1863," I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions, and stores,[1] and in forwarding to their destination passengers [including cabin passengers [2]], who were proceeding from to in the passenger ship which was wrecked at sea, &c.[3]

And I further certify, for the purposes of the tenth[4] section of the said "Passengers Amendment Act, 1863," that the total amount of such expenses is pounds, and that such expenses were duly incurred by me under the said Acts or one of them.

Given under my hand, this day of 18 .

Governor of, &c., or (as the case may be) Her Britannic Majesty's Consul at .

[1] N.B.—1. If more passengers were rescued than forwarded, or if bedding, &c., was not supplied, alter the certificate to suit the facts of the case.

[2] N.B.—2. Omit words in brackets when necessary.

[3] N.B.—3. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind, without any default of of their own, state the fact accordingly.

[4] *Sic.* This is a mistake for the sixteenth section.

in no case shall any larger sum be recovered on account of such expenses than a sum equal to twice the total amount of passage money received or due to and recoverable by or on account of the owner, charterer, or master of such passenger ship, or any of them, for or in respect of the whole number of passengers and cabin passengers who may have embarked in such ship, which total amount of passage money shall be proved by the defendant, if he will have the advantage of this limitation of the debt; but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage money, or to any compensation for loss of passage under the provisions of the said "Passengers Act, 1855."

Passengers forwarded by governor, &c., not entitled to return of passage money.

§ 618. By the Passengers Act, 1855:(*k*)

Insurance of passage money not to be void on account of the nature of the risk.

55. No policy of assurance effected in respect of any passages, or of any passage or compensation monies, by any person by this Act made liable, in the events aforesaid, to provide such passages or to pay such monies, or in respect of any other risk under this Act, shall be deemed to be invalid by reason of the nature of the risk or interest sought to be covered by such policy of assurance.

Penalty on wrongfully landing passengers.

56. If any passenger in any ship, whether a "passenger ship"(*l*) or otherwise, shall be landed at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing shall be rendered necessary by perils of the sea, or other unavoidable accident, the master shall for each offence be liable to a penalty not exceeding fifty pounds nor less than ten pounds sterling.

Passengers to be maintained for 48 hours after arrival.

57. Every passenger in a "passenger ship"(*l*) shall be entitled for at least forty-eight hours next after his arrival at the end of his voyage to sleep in the ship, and to be provided for and maintained on board thereof, in the same manner as during the voyage, unless within that period the ship shall quit such port or place in the further prosecution of her voyage. In case of non-compliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding five pounds sterling.

Penalty.

Passengers' right of action preserved.

58. Nothing herein contained shall take away or abridge any right of action which may accrue to any passenger in any ship, or to any other person, in respect of the breach or nonperformance of any contract made or entered into between or on behalf of any such passenger or other person, and the master, charterer, or owner of any such ship, or his or their agent, or any passage broker.

Penalties for Breach of Statutory Provisions.

Her Majesty may, by Orders in Council, prescribe rules for purposes herein described.

§ 619. Rules and regulations with respect to passenger ships may be prescribed by Order in Council, and penalties are provided for their non-observance:

59. It shall be lawful for Her Majesty, by any Order in Council,(*m*) to prescribe such rules and regulations as to Her Majesty may seem fit, for the following purposes: (that is to say)

1st. For preserving order, promoting health, and securing cleanliness and ventilation on board of "passenger ships"(*l*) proceeding

(*k*) 18 & 19 Vict. c. 119.
(*l*) See *ante* § 600, n.
(*m*) See Orders in Council made under this section, Appx., No. 14 (A) (B) (C) (D).

from the United Kingdom to any port or place in Her Majesty's possessions abroad.

2nd. For permitting the use on board of "passenger ships"(*n*) of an apparatus for distilling water, and for defining in such case the quantity of fresh water to be carried in tanks or casks for the passengers.

3rd. For prohibiting emigration from any port or ports at any time when choleraic or any epidemic disease may be generally prevalent in the United Kingdom or any part thereof, or for reducing the number of passengers allowed to be carried in "passenger ships"(*n*) generally, or from any particular ports under the provisions of this Act.

4th. For requiring duly qualified medical practitioners to be carried in "passenger ships"(*n*) in cases where they would not be required to be carried under the provisions of this Act.

Any such Order in Council may from time to time in like manner be altered, amended, and revoked, as occasions may require.

* * * * * *

Surgeon or master to exact obedience to rules and regulations. Penalty on refusal.

60. In every such "passenger ship"(*n*) the medical practitioner on board, aided by the master thereof, or, in the absence of such medical practitioner, the master of such ship, is hereby empowered to exact obedience to all rules and regulations which may be prescribed by any such Order in Council to be observed on board passenger ships as aforesaid: and any person on board who shall neglect or refuse to obey any such rule or regulation, or who shall obstruct the medical practitioner or master of such ship in the execution of any duty imposed upon him by any such rule or regulation, or who shall offend against any of the provisions of this Act, or who shall be guilty of riotous or insubordinate conduct, shall be liable for each offence to a penalty not exceeding two pounds sterling, and, in addition thereto, to be confined in the common gaol for any period not exceeding one month, at the discretion of the justices who shall adjudicate on the complaint.

Board of Trade to prepare an abstract of Act and Orders in Council.

61. The [Board of Trade] shall from time to time prepare such abstracts as they may think proper of the whole or any part of this Act, and of any such Order in Council as aforesaid; and four copies of such abstracts, together with a copy of this Act, shall, on demand, be supplied by the principal officer of customs at the port of clearance to the master of every "passenger ship"(*n*) proceeding from the United Kingdom to any port or place in her Majesty's possessions abroad; and such master shall, on request made to him, produce a copy of this Act to any passenger on board, for his perusal, and, further, shall post, previous to the embarkation of the passengers, and shall keep posted so long as any passenger shall be entitled to remain in the ship, in at least two conspicuous places between the decks on which passengers may be carried, copies of such abstracts; and such master shall be liable to a penalty not exceeding forty shillings sterling for every day during any part of which, by his act or default, such abstracts shall fail to be so posted; and any person displacing or defacing such abstracts so posted shall be liable to a penalty not exceeding forty shillings sterling.

Such abstract to be posted up in each ship.

Penalty on master for neglect; and on persons defacing abstract.

Sale of spirits prohibited on board passenger ships. Penalty.

62. If in any "passenger ship"(*n*) any person shall, during the voyage, directly or indirectly, sell or cause to be sold any spirits or strong waters to any passenger, he shall be liable for every such offence to a penalty not exceeding twenty pounds nor less than five pounds sterling.

(*n*) *Ante* § 600, n.

§ 620. The master is required to give a bond for the due performance of the requirements of the Passengers Acts:

Bond to be given by masters of British and foreign passenger ships.

63. Before any "passenger ship"(*o*) shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or, in the event of the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a joint and several bond,(*p*) in the sum of two thousand pounds, to her Majesty, according to the form contained in Schedule (C) (*q*) hereto annexed. Such bond shall not be liable to stamp duty, and shall be executed in duplicate.

Counterpart of bond to be certified, and sent to the colony to which ship is bound, and to be received in evidence without further proof of execution.

64. It shall be the duty of the chief officer of customs at the port of clearance of any "passenger ship"(*o*) bound to any of her Majesty's possessions abroad, to certify on one part of such bond that it has been duly executed by the said master of such ship and the other obligor, and to forward the same by post to the colonial secretary of the colony to which such "passenger ship"(*o*) may be bound; and such certificate shall, in any colonial court of judicature in which the bond may be put in suit, be deemed conclusive evidence of the due execution of the bond by the said master and the other obligor, and it shall not be necessary to prove the handwriting of the officer of customs who may have signed such certificate, nor that he was, at the time of signing it, chief officer of customs at the port of clearance: provided that no such bond shall be put in suit in any of her Majesty's possessions abroad after the expiration of three calendar months next after the arrival therein of the said ship, nor in the United Kingdom after the expiration of twelve calendar months after the return of the said ship and of the said master to the United Kingdom.

In the absence of agreement to the contrary, the owner to be responsible in respect of default.

65. In the absence of any agreement to the contrary, the owner shall be the party ultimately responsible, as between himself and the other persons hereby made liable in respect of any default in complying with the requirements of this Act; and that(*r*) if any such last-mentioned person shall pay any monies hereby made payable to or on behalf of any such passengers as aforesaid, the person so paying the same shall be entitled, in the absence of any such agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs of suit.

§ 621. The enactments with respect to contract tickets are as follows:

Penalty on persons fraudulently inducing others to engage passages.

70. If any person shall by false representation as to the size of a ship, or otherwise, or by any false pretence or fraud whatsoever, induce any person to engage a passage in any ship, the person so offending shall for each offence be liable to a penalty not exceeding twenty pounds, nor less than five pounds sterling.

(*o*) *Ante* § 600, n.

Bond to repay expenses of rescuing and forwarding shipwrecked passengers, where owners and charterers of vessel reside abroad.

(*p*) By 26 & 27 Vict. c. 51, s. 17, in the case of a passenger ship, of which neither the owners nor charterers reside in the United Kingdom, the bond required to be given to the crown by the sixty-third section of the "Passengers Act, 1855," shall be for the sum of five thousand pounds instead of two thousand pounds; and an additional condition shall be inserted in such bond to the effect that the obligors therein shall, subject to the provisions and limitations hereinbefore contained, be liable for and shall pay to her Majesty and her successors, as a Crown debt, all expenses which may be incurred under the provisions hereinbefore, and in the "Passengers Act, 1855," contained, in rescuing, maintaining, and forwarding to their destination any passengers of such ships who by reason of shipwreck or any other cause, except their own neglect or default, may not be conveyed to their intended destination by or on behalf of the owner, charterer, or master of such ship.

(*q*) See *post* § 625.

(*r*) *Sic.*

71. Every person whatever, except the [Board of Trade] and persons acting for them and under their direct authority, who shall receive money from any person for or in respect of a passage in any ship, or of a cabin passage in any "passenger ship"(*r*) proceeding from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, shall give to the person paying such money a contract ticket,(*s*) signed by the owner, charterer, or master of the ship or "passenger ship,"(*r*) (as the case may be) in which the passage is to be provided, or by some person in their or his name, and on their or his behalf: such contract ticket shall be made out in plain and legible characters on a printed form, which, in the case of cabin passengers, shall be according to the form contained in Schedule (K) (*t*) hereto annexed, and in the case of all other passengers in the form contained in Schedule (L) (*t*) hereto annexed, or according to such other form as in either case may from time to time be prescribed by the [Board of Trade] in any notice published in the *London Gazette:* and any directions contained on the face of such form of contract ticket shall be obeyed in the same manner as if herein set forth. In case of noncompliance with any of the requirements of this section, or of any of the directions on such form of contract ticket not inconsistent with this Act, the person so offending shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling: provided always that such contract tickets shall not be liable to any stamp duty.

Contract tickets for cabin and other passengers.

72. Any person who shall alter or cause to be altered after it is once issued, or shall induce any person to part with, render useless, or destroy any such contract ticket, during the continuance of the contract which it is intended to evidence (except in the case of cabin passengers who may have consented thereto), shall be liable in each case to a penalty not exceeding twenty pounds sterling.

Penalty for inducing any one to part with contract ticket.

73. Any question which may arise respecting the breach or nonperformance of any of the stipulations in any such contract ticket may, at the option of any passenger or cabin passenger interested therein, be heard and determined in a summary way by the justices of the peace, magistrates, sheriffs, or other officers hereinafter authorised to adjudicate on offences and complaints under the Act, who are hereby authorized to try such questions, and if they shall find that a breach of contract has been committed, to award to the complainant such damages and costs as they may think fit, not exceeding in any case the amount of the passage money specified in such contract ticket and twenty pounds; and if such damages and costs be not at once paid, payment thereof shall thereupon be enforced, in the same manner and by the same processes as the payment of subsistence money, or the return of passage money, may be enforced under this Act: provided that if any passenger shall have obtained compensation or redress, under any of the other provisions of this Act, he shall not be entitled to sue under this section for damages for the same matter or cause of complaint.

Summary remedy for breach of contract.

74. If any cabin or other passenger shall, on demand of any emigration officer, refuse or omit to produce his contract ticket, or if any owner, charterer, or master of a ship shall on like demand refuse or omit to produce to any emigration officer in the United Kingdom the counterpart of any contract ticket issued by them, or on their behalf, for the inspection of such emigration officer, and for the purposes of this Act, every person so offending against the requirements of this section shall for each offence be liable summarily to a penalty not exceeding ten pounds.

Penalty on cabin passengers and on masters,&c., omitting to produce contract tickets.

(*r*) *Ante* § 600, n.
(*s*) See *Ellis* v. *Pearce*, E. B. & E. 431 ; *ante* § 600, n.
(*t*) *Post* § 625.

§ 622. Sections 84–94 give a remedy by summary process before two justices or a police magistrate, or in Scotland a sheriff or sheriff-substitute, for the recovery of penalties, forfeitures, the return of passage money, subsistence money, damages or compensation under the Act. Actions against officers executing the Act must be brought within three months after the cause of action has arisen, and ten days' notice in writing must be given.

Colonial Voyages.

§ 623. The special provisions with regard to colonial voyages are as follows:

Colonial voyages defined.

95. For the purposes of this Act the term "colonial voyage" shall signify any voyage from any place within any of such possessions (except the territories under the government of the East India Company and the island of Hong Kong) to any place whatever, where the distance between such places shall exceed four hundred miles, or the duration of the voyage, to be prescribed as hereinafter mentioned, shall exceed three days.

This Act to apply to all colonial voyages, except as relates to matters herein named.

96. This Act shall apply, so far as the same is applicable, to all ships carrying passengers on any such "colonial voyage," except as to such parts of the Act as relate to the following matters: (that is to say)

1. To passage brokers and their licences:
2. To passengers contract tickets:
3. To emigrant runners:
4. To the giving bond to her Majesty:
5. To the keeping on board a copy of this Act.
6. To Order in Council regulating emigration from the United Kingdom, or prescribing rules for promoting health, cleanliness, order, and ventilation:

If any colonial voyage be less than three weeks, this Act not to apply to subjects herein named.

Provided that if the prescribed duration of any "colonial voyage" be less than three weeks, then, in addition to the matters lastly hereinbefore excepted, the provisions of this Act shall not extend or apply, so far as they relate to the following subjects: (namely)

The construction or thickness of the decks:
The berths and berthing:
The height between decks:
Privies:
Hospitals:
Light and ventilation:
Manning:
Passengers' stewards:
Passengers' cooks and cooking apparatus:
The surgeon, and medicine chest:
The maintenance of passengers for forty-eight hours after arrival:

Provided also, that in the case of such "colonial voyages"(*u*) whereof the prescribed duration is less than three weeks, the requirements of this Act respecting the issue of provisions shall not, except as to the issue of water, be applicable to any passenger who may have contracted to furnish his own provisions.

Governor of colonies

97. It shall be lawful for the Governor of each of her Majesty's possessions abroad, by any proclamation to be by him from time to time issued

(*u*) *Ante* § 95.

for that purpose (which shall take effect from the issuing thereof), to declare what shall be deemed for the purposes of this Act to be the length of the voyage of any ship carrying passengers from such possession to any other place whatsoever, and to prescribe such scale of diet for the use of the passengers during the voyage as he shall think proper, and also to declare what medicines, medical comforts, medical instruments, and other matters shall be deemed necessary for the medical treatment of the passengers during such "colonial voyage"(*v*) and the provisions and requirements of every such proclamation shall be enforced in all her Majesty's dominions as if they were incorporated in this Act, and in like manner as the provisions of this Act may be enforced; and a copy of any such proclamation, purporting to be under the hand of the governor of the colony wherein the same may have been issued, and under the public seal of such colony, shall in any part of her Majesty's dominions wherein the same shall be produced be received as good and sufficient evidence of the due issuing and of the contents of such proclamation, unless it shall be proved that such copy is not genuine.

may, by proclamation, declare length of voyage, and prescribe scale of diet, medicines, and medical comforts.

Copies of proclamations to be received as evidence.

98. It shall be lawful for the governors of any such possessions respectively to authorise such person or persons as they may think fit to make the like survey and examination of "passenger ships"(*x*) sailing from such possessions respectively as is hereinbefore required to be made by two or more competent surveyors in respect of "passenger ships"(*x*) sailing from the United Kingdom,(*y*) and also to authorise in such cases, as to such governors may seem proper, any competent person to act as medical practitioner on board any "passenger ship"(*x*) proceeding on a "colonial voyage."(*v*)

Provision for survey of ships in the Colonies and for appointing surgeons thereto.

99. This Act shall not apply to India: it shall, however, be lawful for the Governor-General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act, or any part thereof, shall apply to the carriage of passengers upon any voyage from any ports or places within such territories, to be specified in such Act or Acts; to any other places whatsoever, to be also specified in such Act or Acts; and also in like manner to authorise the substitution, as respects such voyages, of other articles of food and provisions for those hereinbefore enumerated; and to declare the rule of computation by which the length of any such voyage shall be estimated; and to determine the persons or officers who in such territories shall be entitled to exercise or perform the powers, functions, or duties hereinbefore given to or imposed upon the emigration officers and officers of customs in the United Kingdom; and to authorise the employment on board any ship of a medical practitioner duly qualified by law to practise as a physician, surgeon, or apothecary within such territories; and to declare for the purposes of this Act the space necessary for passengers, and the age at which two children shall be considered equal to one statute adult, in ships that may clear out from any port or place within such territories; and also to declare in what manner, and before what authorities, and by what form of proceedings, the penalties imposed and the sums of money made recoverable by this Act shall be sued for and recovered within such territories, and to what uses such penalties shall be applied: and on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall

Power to the Governor-General of India in Council, by any Act to be passed for that purpose, to adopt this Act for India, and to make rules respecting food, passengers, surgeons, &c.;

and to declare, in what manner penalties, &c.,

may be sued for and recovered.

(*v*) *Ante* § 95.
(*x*) *Ante* § 600, ii.
(*y*) See 39 & 40 Vict. c. 80, s. 17, *ante* § 596.

Indian Act may be enforced in the colonies in like manner as this Act.

be specified. The provision of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced: Every such Indian Act shall be subject to disallowance and repeal, and shall in the same manner be transmitted to England, to be laid before both Houses of Parliament, as in the case of any other law made by the Governor-General in Council.

Voyages to the United Kingdom.

§ 624. And with regard to voyages to the United Kingdom:

List of passengers brought into the United Kingdom to be delivered by the master of the ship to the emigration officer. Penalty for neglect.

100. The master of every ship bringing passengers into the United Kingdom from any place out of Europe, and not within the Mediterranean Sea, shall, within twenty-four hours after arrival, deliver to the emigration officer or his assistant, or in their absence to the chief officer of customs at the port of arrival, a correct list, signed by such master, and specifying the names, ages, and callings of all the passengers embarked, and also the port or ports at which they respectively may have embarked, and showing which, if any of them, may have died, with the supposed cause of death, or been born on the voyage; and if any master shall fail so to deliver such list, or if the same shall be wilfully false, he shall, on conviction, as hereinbefore mentioned, be liable to a penalty not exceeding fifty pounds.

Penalty on masters for having on board a greater number of persons than prescribed by section 14 of this Act.

101. If any ship bringing passengers into the United Kingdom from any place out of Europe shall have on board a greater number of passengers or persons than in the proportions respectively prescribed in the fourteenth section (*z*) of this Act for ships carrying passengers from the United Kingdom, the master of such ship shall be liable, on such conviction as hereinbefore mentioned, to a penalty not exceeding ten pounds nor less than five pounds for each such person or statute adult constituting any such excess.

Provisions and water to be issued to passengers brought into the United Kingdom the same as in ships carrying passengers from the United Kingdom. Penalty for default.

102. The master of every passenger ship bringing passengers into the United Kingdom from any place out of Europe shall make to each statute adult during the voyage, including the time of detention, if any, at any port or place before the termination thereof, issues of pure water and of good and wholesome provisions in a sweet condition, in quantities not less in amount than is prescribed in the thirty-fifth section (*a*) of this Act for passengers proceeding from the United Kingdom; and in case of noncompliance with any of the requirements of this section the master of such ship shall, on such conviction as hereinbefore mentioned, be liable for each offence to a penalty not exceeding fifty pounds.

Forms of Passengers' Lists, Contract Tickets, &c.

§ 625. These are prescribed by the schedules to the Passengers Act, 1855:

Schedules to be part of the Act.

103. The schedules to this Act shall be deemed to be part of this Act, and all the directions therein contained shall be duly followed and enforced, under a penalty not exceeding ten pounds on the person failing to obey the same respectively.

(*z*) *Ante* § 604. (*a*) *Ante* § 612.

SCHEDULE (B).

Form of Passengers' List.(*b*)

Ship's Name.	Master's Name.	Tons per Register.	Aggregate Number of Superficial Feet in the several Compartments set apart for Passengers other than Cabin Passengers.	Total Number of Statute Adults, exclusive of Master, Crew, and Cabin Passengers, which the Ship can legally carry.	Where bound.

I hereby certify, that the Provisions actually laden on board this Ship are sufficient, according to the requirements of the Passengers Act, for Statute Adults for a voyage of Days.

(Signature)_____ Master.

Date_____18 .

(*b*) See 18 & 19 Vict. c. 119, ss. 16, 17, *ante* § 605. This form has been substituted by the Board of Trade for the one originally prescribed.

Names and Descriptions of Passengers.

N.B.—Cabin Passengers must also be included in this Schedule, after the other Passengers. Sec. 6 of 26 and 27 Vict. cap. 51.

Port of Embarkation.	No. of Contract Ticket.	Names of Passengers.	Profession, Occupation, or Calling of Passengers.	English.								Scotch.								Irish.								Foreigners.								Port at which Passengers have Contracted to Land.
				Age of each Adult of 12 Years and upwards.				Ages of Children between 1 and 12 Years.		Infants.		Age of each Adult of 12 Years and upwards.				Ages of Children between 1 and 12 Years.		Infants.		Age of each Adult of 12 Years and upwards.				Ages of Children between 1 and 12 Years.		Infants.		Age of each Adult of 12 Years and upwards.				Ages of Children between 1 and 12 Years.		Infants.		
				Married		Single.						Married.		Single.						Married.		Single.						Married.		Single.						
				Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.	

SUMMARY OF STEERAGE AND CABIN PASSENGERS.

NATIONALITIES.	NUMBER OF SOULS.							
	Adults of 12 Years of Age and upwards.				Children between 1 and 12 Years.		Infants.	
	Married.		Single.					
	M.	F.	M.	F.	M.	F.	M.	F.
English . .								
Scotch . .								
Irish								
Foreigners . .								
Total . .								

	No.
Total Number of Adults	
Children between 1 and 12; equal to Statute Adults . .	
Total Number of Statute Adults . . .	

We hereby certify, That the above is a correct List of the Names and Descriptions of all the Passengers who embarked at the Port of_____

(Signed)_____Master.

_____Emigration Officer.

(Countersigned)_____Officer of Customs at_____

Date_____18 .

SCHEDULE (C).

FORM of BOND to be given by the MASTER and by the OWNER or CHARTERER of a "Passenger Ship."(*d*)

KNOW all men by these presents, that we,*
are held and firmly bound unto our Sovereign
by the grace of God of the United Kingdom of Great Britain and Ireland defender of the faith, in the sum of *two thousand pounds* (*e*) of good and lawful money of Great Britain, to be paid to our said the heirs and successors; to which payment well and truly to be made we bind ourselves and every of us jointly and severally, for and in the whole, our heirs, executors, and administrators, and every of them firmly by these presents. Sealed with our seals. Dated this day of one thousand eight hundred and fifty .

* Insert here the Christian and surnames in full, with occupations and addresses of each of the two obligors.

WHEREAS by the "Passengers Act, 1855," it is amongst other things enacted, that before any "passenger ship" shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or in the absence of such owner or charterer, or if the master

(*d*) See 18 & 19 Vict. c. 119, ss. 11, 63, *ante* §§ 601, 620.

(*e*) By 26 & 27 Vict. c. 51, s. 17, the bond must be for £5000, where neither owners nor charterers reside in the United Kingdom, and must contain the additional condition therein specified. See *ante* § 620, n.

be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a bond to Majesty, heirs and successors, in the sum of *two thousand pounds*:(*f*)

Now the condition of this obligation is such, that if the ship whereof the above-bounden is master, bound to is in all respects seaworthy* [and if the said ship shall call at the port of and there shall be shipped on board at such port pure water for the use of the passengers, sufficient in quantity to afford an allowance of three quarts daily to each statute adult for the period of days on the voyage from such port to the final port or place of discharge of such vessel], and if (notwithstanding any penalty by the said Act imposed, and whether the same may have been sued for and recovered or not) all and every the requirements of the said Passengers Act, 1855 (except such of them as relate exclusively to passage brokers and runners), and of the [Board of Trade] acting in the manner prescribed by the said Act, and of any order passed by Her Majesty in Council relating to "passenger ships" and now in force, shall in all respects be well and truly performed † [and if the master for the time being of the said ship shall submit himself, in like manner as a British subject being the master of a British passenger ship, to the jurisdiction of the tribunals in Majesty's possessions abroad, empowered by the said Act to adjudicate on offences committed against the said Act], and if moreover all penalties, fines, and forfeitures which the master of such ship may be adjudged to pay for or in respect of the breach or nonfulfilment of any of such requirements as aforesaid shall be well and truly paid, and if all expenses incurred by the Secretary of State or any Governor or British consular officer under the provisions of this Act shall also be well and truly paid, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered by the above-bounden and in the presence of ‡

§ [I hereby certify, that the above bond was duly signed, sealed, and delivered according to the law of Great Britain by the said master of the said ship and by the said (*other obligor*)].

(Signature) _____ { Chief officer of Customs for the port of

(Date) _____ 189 .

(*f*) See note (*e*), *ante*.

* The clause within brackets is to be inserted only when the ship is to call at an intermediate port to take in water as provided by s. 34 of the Act.

† This clause to be inserted only in the case of a foreign passenger ship proceeding to any of the British Colonies.

‡ Insert names and addresses in full of the witnesses.

§ Certificate to be signed by the chief officer of Customs, and forwarded with the bond to the colony, according to s. 64 of the Act.

SCHEDULE (K).(g)

Counterpart of Cabin Passenger's Contract Ticket.

This Counterpart is to be produced by the Owner, Charterer, or Master of the Ship to the Emigration Officer at the Port of Embarkation (or, if no such Officer, to the Officer of Customs), or to any one appointed by him to receive it, under a penalty for default not exceeding £10.

These Directions form Part of, and must appear on, each Contract Ticket.

1. A contract Ticket in this Form must be given to every Cabin Passenger engaging a Passage in a "Passenger Ship" from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, under a penalty not exceeding £50.
2. Unless the Passengers are to have a free Table, the Victualling Scale for the Voyage must be appended to the Contract Ticket.
3. All the blanks must be correctly and legibly filled in, and the Ticket must be legibly signed with the Christian Names and Surname and Address in Full of the Party issuing the same.
4. The day of the Month on which the Ship is to sail must be inserted in Words and not in Figures only.
5. When once issued, this Ticket must not be withdrawn from the Passenger, nor any Alteration or Erasure made in it, unless with his consent.

Ship of Tons Register, to Sail from for on the Day of 189 .

In consideration of the Sum of £ I hereby agree with the Person named in the Margin hereof that such Person shall be provided with Class Cabin Passage in the above-named Ship, to sail from the Port of for the Port of in with not less than Cubical Feet of Luggage for each Person, and that such Person shall be victualled as Class Cabin Passenger during the Voyage, and the Time of Detention at any Place before its Termination; and I further engage to land the Person aforesaid, with Luggage, at the last-mentioned Port, free of any Charge beyond the Passage-Money aforesaid; and I hereby acknowledge to have received the Sum of £ in { full / part } Payment of such Passage-Money.

Names.	No. of Persons.	
	Adults above 12 Yrs.	Children 12 Years and under.
Total No. of persons.	}	

Signature in full
Place and Date
[If signed by a Broker or Agent, state on whose Behalf.]

Deposit £
Balance £
Total £

to be paid at

N.B.—This Contract Ticket is exempt from Stamp Duty.

Cabin Passenger's Contract Ticket.

These Directions, and the "Notices to Passengers" below, form part of, and must appear on, each Contract Ticket.

1. A Contract Ticket in this Form must be given to every Cabin Passenger engaging a Passage in a "Passenger Ship" from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, under a penalty not exceeding £50.
2. Unless the Passengers are to have a free Table, the Victualling Scale for the Voyage must be appended to the Contract Ticket.
3. All the Blanks must be correctly and legibly filled in, and the Ticket must be legibly signed with the Christian Names and Surname and Address in full of the Party issuing the same.
4. The Day of the Month on which the Ship is to sail must be inserted in Words and not in Figures only.
5. When once issued, this Ticket must not be withdrawn from the Passenger, nor any Alteration or Erasure made in it, unless with his Consent.

Ship of Tons Register, to sail from for on the Day of 189 .

In consideration of the Sum of £ I hereby agree with the Person named in the margin hereof that such Person shall be provided with Class Cabin Passage in the above-named Ship, to sail from the Port of for the Port of in with not less than Cubical Feet of Luggage for each Person, and that such Person shall be victualled as Class Cabin Passenger during the Voyage, and the time of Detention at any Place before its Termination; and I further engage to land the Person aforesaid, with Luggage, at the last-mentioned Port, free of any Charge beyond the Passage-Money aforesaid; and I hereby acknowledge to have received the Sum of £ in { full / part } Payment of such Passage-Money.

Names.	No. of Persons.	
	Adults above 12 Yrs.	Children 12 Years and under.
Total No. of Persons.	}	

Signature in full
Place and Date
[If signed by a Broker or Agent, state on whose Behalf.]

Deposit £
Balance £
Total £

to be paid at

Notice to Cabin Passengers.

1. If Cabin Passengers, through no Default of their own, fail to obtain a Passage in the Ship, and on the Day named in this Contract Ticket, they may obtain Redress for Breach of Contract by Summary Process under the 73rd Section of the "Passengers Act, 1855."
2. Cabin Passengers must produce, on Demand, their Contract Tickets to the Government Emigration Officer, under a Penalty not exceeding £10. This Ticket should therefore be preserved and kept in readiness to be produced on board the Ship.

N.B.—This Contract Ticket is exempt from Stamp Duty.

(g) See 18 & 19 Vict. c. 119, s. 71, *ante* § 621.

SCHEDULE (L).(*h*)

Ship

Counterpart of Passenger's Contract Ticket.

THIS Part of the Contract Ticket is to be separated from the other, and to be delivered by the Passenger to the Emigration Officer at the Port of Embarkation (or, if no such Officer, to the Officer of Customs), or to any one appointed by him to receive it, under a Penalty not exceeding £10.

CONTRACT TICKET.

I engage that the Persons mentioned below shall be provided with a Steerage Passage to and be landed at the Port of in in the Ship of Tons, with not less than Ten Cubic Feet for Luggage for each Statute Adult, and shall be victualled during the whole voyage according to the Dietary Scale prescribed by Law. The Ship to receive her Passengers at on the day of 18 . Passage Money, including Government Dues, if any, and all charges of Landing, £ .

Names.	Ages.

Souls, equal to

* Statute Adults.

To be signed in full by the Party issuing the Ticket.

* Insert Number of Souls and of Statute Adults respectively.

PASSENGER'S CONTRACT TICKET.

These Directions, and the "Notices to Passengers" below, form Part of, and must appear on, each Contract Ticket.

1. A Contract Ticket in this Form must be given to every Passenger engaging a Passage from the United Kingdom to any Place out of Europe, and not being within the Mediterranean Sea, immediately on the payment or deposit by such Passenger of the whole or any part of the Passage Money, for or in respect of the Passage engaged.
2. The Victualling Scale for the Voyage must be printed in the Body of the Ticket.
3. All the Blanks must be correctly filled in, and the Ticket must be legibly signed with the Christian Names and Surname and Address in full of the Party issuing the same.
4. The Day of the Month on which the Passengers are to embark must be inserted in Words and not in Figures.
5. When once issued, this Ticket must not be withdrawn from the Passenger, nor any Alteration, Addition, or Erasure made in it.
6. *A Contract Ticket shall not contain on the face thereof any condition, stipulation, or exception not contained in this Form.*

Ship of Tons Register, to take in Passengers at for on the day of 18 .

Names.	Ages.	Equal to Statute Adults.

I engage that the Person named in the Margin hereof shall be provided with a Steerage Passage to, and shall be landed at, the Port of in in the Ship with not less than Ten Cubic Feet for Luggage for each Statute Adult, and shall be Victualled during the Voyage and the Time of Detention at any Place before its Termination, according to the subjoined Scale, for the Sum of £ , including Government Dues before Embarkation, and Head Money, if any, at the Place of Landing, and every other Charge, except Freight for Excess of Luggage beyond the Quantity above specified, and I hereby acknowledge to have received the Sum of £ in {full / part} Payment.

The following Quantities, at least, of Water and Provisions (to be issued daily) will be supplied by the Master of the Ship, as required by Law; viz.—to each Statute Adult 3 Quarts of Water daily, exclusive of what is necessary for cooking the Articles required by the Passengers Act to be issued in a cooked state; and a Weekly Allowance of Provisions according to the following Scale:—

[Here insert the Victualling Scale intended to be used on the Voyage. This must be either the Scale prescribed in the 35th Section of the Passengers Act, 1855, or that Scale modified by the introduction of Articles authorized by the Act, to be substituted for Oatmeal, Rice, and Potatoes.]

[N.B.—If Mess Utensils and Bedding are to be provided by the Ship, the Stipulation must be inserted here.]

Signature in Full

Place and Date

[If signed by a Broker or Agent, state on whose Behalf.]

Deposit £

Balance £ to be paid at

Total £

Notices to Passengers.

1. If Passengers, through no Default of their own, are not received on board on the Day named in their Contract Tickets, or fail to obtain a Passage in the Ship, they should apply to the Government Emigration Officer at the Port, who will assist them in obtaining Redress under the Passengers Act.
2. Passengers should carefully keep this Part of their Contract Ticket till after the End of the Voyage.

N.B.—This Contract Ticket is exempt from Stamp Duty.

(*h*) See 18 & 19 Vict. c. 119, s. 71, *ante* § 621. This form of ticket was substituted for the one originally prescribed by a notice of the Board of Trade of February 22, 1889.

Offences on Passenger Steamers.

§ 626. The following provisions have been enacted for the purpose of enforcing proper behaviour and discipline among passengers in a passenger steamer.

By the Merchant Shipping Act Amendment Act, 1862 :(*i*)

35. The following offenders: (that is to say)

(1) Any person who, being drunken or disorderly, has been on that account refused admission into any duly surveyed passenger steamer by the owner or any person in his employ, and who, after having had the amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter such steamer; Penalties on drunken or disorderly passengers.

(2) Any person who, being drunken or disorderly on board any such steamer, is requested by the owner or any person in his employ to leave the same at any place in the United Kingdom at which he can conveniently so do, and who, having had the amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request;

(3) Any person on board any such steamer who, after warning by the master or any other officer of the steamer, molests or continues to molest any passenger; On persons molesting passengers.

(4) Any person who, after having been refused admission into any such steamer by the owner or any person in his employ on account of such steamer being full, and who after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same; Penalties on persons forcing way on board the ship when full.

(5) Any person, having got on board any such steamer, who, upon being requested on the like account by the owner or any person in his employ to leave such steamer before the same has quitted the place at which such person got on board, and who upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request; And on persons refusing to quit the ship when full.

(6) Any person who travels or attempts to travel in any such steamer without having previously paid his fare, and with intent to avoid payment thereof; Penalties for avoiding payment of fares.

(7) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof;

(8) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer; and

(9) Any person on board any such steamer who does not, when required by the master or other officer of such steamer, either pay his fare or exhibit such ticket or other receipt (if any) showing the payment of his fare as is usually given to persons travelling by and paying their fare for such steamer;

Shall for every such offence be liable to a penalty not exceeding forty

(*i*) 25 & 26 Vict. c. 63.

shillings; but such liability shall not prejudice the recovery of any fare payable by him.

Penalty for injuring steamer or molesting crew.

36. Any person on board any such steamer who wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of such steamer, or to obstruct, impede, or molest the crew or any of them in the navigation or management of such steamer, or otherwise in the execution of their duty upon or about such steamer, shall for every such offence be liable to a penalty not exceeding twenty pounds.

Manner of apprehending offenders.

37. It shall be lawful for the master or other officer of any duly surveyed passenger steamer, and for all persons called by him to his assistance, to detain any person who has committed any offence against any of the provisions of the two last preceding sections of this Act, and whose name and address are unknown to such officer, and to convey such offender with all convenient despatch before some justice without any warrant or other authority than this Act; and such justice shall have jurisdiction to try the case, and shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

And by the Merchant Shipping Act, 1854:(*h*)

Penalty on persons refusing to give their name and address.

324. Every person who, having committed any of the offences mentioned in [sub-sections 4, 5, 6, 7, or 8 of s. 35 of the Merchant Shipping Act Amendment Act, 1862], or [any] of them, refuses on application of the master of the ship or of any other person in the employ of the owner thereof to give his name and address, or who on such application gives a false name or address, shall incur a penalty not exceeding twenty pounds, to be paid to the said owner.

Power to refuse or remove passengers who are drunk or misconduct themselves.

325. The master of any home-trade passenger steamship may refuse to receive on board thereof any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board, or if such person is on board, may put him on shore at any convenient place; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid.

(*h*) 17 & 18 Vict. c. 104.

CHAPTER XIV.

COLLISIONS.

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Liability of Masters and Owners for Damage by Collision.

Master's duty as to avoiding collisions.

§ 627. An important part of the master's duty is so to navigate his ship as to avoid collision with any other vessel. He is bound to take all such precautions as a man of ordinary prudence and skill, exercising a reasonable foresight, would use to avert danger and to prevent his ship doing damage to others in the circumstances in which he may happen to be placed.(*a*) And even when his ship is rendering salvage services, if she causes damage to the salved ship by the master's negligence, or gross want of proper navigation, the shipowner, master and salving ship are liable for the damage thus caused.(*b*)

Regulations (*c*) have been established by Statutes and Orders in Council for the purpose of preventing collisions at sea, and all owners and masters are bound to carefully observe and obey them.(*d*) If any of them are neglected by master or crew, the owners and master will, as a rule, be liable for any damage occasioned by such neglect.(*e*)

A master is liable both to his owners and to third persons for

(*a*) *The William Lindsay*, L. R. 5 P. C. at 343.
(*b*) *The C. S. Butler*, L. R. 4 Adm. 178; *The Dwina*, (1892) P. 58.
(*c*) *Post* § 654.
(*d*) 25 & 26 Vict. c. 63, s. 27; *post* § 654.
(*e*) But whether the master can be made liable for the negligent acts of the crew appears doubtful in this country, though it has been so held in America. See *Blaikie* v. *Stembridge*, 6 C. B. N. S. 894.

Liability of master.

damage resulting from a collision caused by his negligence or misconduct, and he may be sued either at common law or in an Admiralty Court.(*f*) "It is open to any person, who has received damage by a collision, to recover at common law; or to avail himself of his lien on the ship which he asserts has injured him."(*g*)

Remedy in Court of Admiralty.

§ 628. Proceedings in the Admiralty Division against the ship in default afford, in some respects, a better remedy in cases of collision, than an action at law. For here the plaintiff has the power of proceeding *in rem*, that is, against the ship itself, and of arresting both English and foreign ships. And upon questions of fact, which require skill and experience in navigation, the Court has the assistance of the Trinity Masters.

While action is pending at Common Law.

While an action is pending at common law, the Admiralty Division will not allow a suit based on precisely the same grounds. But where the plaintiff has obtained a judgment in an action at Common Law, and is unable to obtain the results of that judgment, owing to the insolvency of the defendants or otherwise, he may afterwards avail himself of proceedings *in rem* in the Admiralty Division.(*h*) Nor is a judgment *in rem* in the Admiralty Division any bar to subsequent proceedings in a court of common law, unless the proceeds of the ship are at least equal to the amount of damage suffered.(*i*) But where proceedings *in rem* in respect of the same collision are pending in a foreign court, the Admiralty Division will stay an action here if it deems it contrary to good faith or vexatious.(*k*) And under certain circumstances a foreign judgment will be an absolute bar to proceedings between the same parties in this country.(*l*)

When judgment *in rem* is a bar.

Burden of proof.

§ 629. In cases of collision, the burden of proof lies upon the owners of the ship seeking to recover damages, and they must establish that the loss was attributable to the fault of the party sued.(*m*) But if a collision happen between a stationary vessel and a vessel in motion, the latter will be held to blame, unless she can excuse or justify herself.(*n*) When there is a reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen.(*o*)

The damage will be presumed to be the consequence of the collision, unless the contrary be shown. "When a collision has

(*f*) *The Volant*, 1 W. Rob. at p. 387.

(*g*) Per Dr. Lushington, *The John & Mary*, Swab. at p. 473. And see *The Bernina*, 13 Ap. Ca. 1; *The Petrel* (1893) P. 320.

(*h*) *The John & Mary*, Swab. 471; and see *The Bengal*, Swab. 468.

(*i*) *Nelson* v. *Couch*, 15 C. B. N. S. 99.

(*k*) *The Catterina Chiazzare*, 1 P. D. 368; *The Peshawur*, 8 P. D. 32; *The Christiansborg*, 10 P. D. 141; *The Reinbeck*, 60 L. T. 209.

(*l*) See *Castrique* v. *Imrie*, L. R. 4 H. L. 414.

(*m*) *The City of London*, Swab. 300; 11 Moo. P. C. 311; *The Bolina*, 3 No. of Ca. 208; *The Carron*, 1 Spinks, at p. 93; *The Monte Rosa*, (1893) P. 23.

(*n*) *The Annot Lyle*, 11 P. D. 114; *The Indus*, 12 P.D. 46; *The Albano* (1892) P. at p. 427; *The Culgoa*, 9 T. L. R. 564.

(*o*) *The Catherine of Dover*, 2 Hag. at 154.

taken place, though both vessels are to blame, yet the general inference is that the damage accruing was caused by the collision, and the burden of proof is on those who wish to show that any part of it arose from subsequent want of skill in the crew of the damaged vessel."(*p*)

Negligence, what it is.

§ 630. Negligence has been defined as "a want of that attention and vigilance which is due to the security of other vessels that are navigating on the same seas, and which, if so far neglected as to become, however unintentionally, the cause of damage of any extent to such other vessels, the maritime law considers as a dereliction of bounden duty, entitling the sufferer to reparation in damages."(*q*) And this want of due vigilance may be shown either in the improper navigation of the ship, such as the absence of an adequate look-out,(*r*) or in the negligently(*s*) sending the ship to sea with defective equipment, such as an inadequate crew or inefficient steering gear.(*t*)

Liability for consequential damage.

§ 631. If through the negligence or misconduct of those on board a ship, another ship either receives or does damage, the owners of the wrong-doing ship are liable for the damage, even though there was no collision between the two ships.(*u*)

Thus, in one case, the *Blue Bell*, coming up the channel to Hartlepool on a dark morning, was compelled suddenly to port her helm by reason of the *Industry* being discovered across the fair way of the channel without any light exhibited. In consequence of the manœuvre, the *Blue Bell* took the ground, and though her anchor was let go, dragged it and drove against the town wall of Hartlepool, and suffered damage. It was held in the Court of Admiralty that the owners of the *Blue Bell* were entitled to recover compensation for the damage sustained.(*x*)

And if a ship becomes unmanageable by the negligence of her crew, and while so unmanageable, comes into collision with another or otherwise does damage, the former ship is liable for the damage so occasioned.(*y*)

Where ship was obeying authorities of port.

§ 632. Where a master and crew are bound by statute to obey the directions of a harbour master, and a collision is occasioned by the ship being conducted according to the harbour master's directions, the ship is not liable, in the absence of contributory

(*p*) Per Dr. Lushington in *The Linda*, Sw. 306; *The Mellona*, 3 W. Rob. 7.

(*q*) Per Lord Stowell in *The Dundee*, 1 Hagg. at 120.

(*r*) *The Emily*, Olcott, 132; *The Indiana*, 1 Abb. 330 (American); Pritchard Adm. Dig. I. 219; *The City of London*, Swab. 300; *The George*, 2 W. Rob. 386; *The Mellona*, 3 W. Rob. 7; *The Urania*, Swab. 253; *The Diana*, 1 W. Rob. 131; 4 Moo. P. C. 11; *The Europa*, B. & L. 89.

(*s*) *The European*, 10 P. D. 99.

(*t*) *The General Gordon*, 63 L. T. 117; reversed on the facts, 68 L. T. 469; *The Virgo*, 35 L. T. 519; *The Warkworth*, 9 P. D. 20, 145; *The European*, 10 P. D. 99; *The Merchant Prince*, (1892) P. 179.

(*u*) *The Industrie*, L. R. 3 Ad. 303; *The Sisters*, 1 P. D. 117; *The Cynthia*, 2 P. D. 52.

(*x*) *The Industrie*, L. R. 3 Ad. 303.

(*y*) *Seccombe* v. *Wood*, 2 Moo. & R. 290; *Romney Marsh* v. *Trinity House*, L. R. 5 Ex. 204, 7 Ex. 247.

negligence on the part of her master or crew.(z) And if, under such circumstances, the ship herself receives damage, she can recover against the port authorities.(a)

If a master is ordered by the authorities of a port, in which his ship lies, to take up a berth in a particular part of the harbour, there is no obligation upon him to examine the sufficiency of a buoy to which he moors his ship in that part, even although that buoy belongs to a private company, if the port authorities sanction the use of such buoy and treat it as a proper and sufficient mooring place for ships frequenting the port. But the master "ought not implicitly to trust to that, which he cannot to a certainty know is a safe buoy, and he ought to take reasonable precautions, in the event of its not holding him, to bring up and to secure himself from danger"; as, for instance, by keeping his anchor ready to be let go in case of accident.(b) If, through the insufficiency of such buoy, the ship parts from her moorings, and causes damage, and if the master had taken, as above mentioned, such other reasonable precautions as would be sufficient under ordinary circumstances to meet the exigencies of the case, neither the master nor the shipowner is liable for the damage so caused.(c)

But the port authorities will not be liable where the collision has been caused or contributed to by the act of the master, as for instance in engaging a tug of insufficient power, even when such tug is in the employment of the port authorities, there being no obligation on them to supply a tug.(d)

Liability of harbour authority.

A vessel suffering damage by the negligence of port or navigation authorities may recover against them, even though not acting under their control or direction at the time of receiving the injury.(e) Thus, for example, a harbour or conservancy authority on whom an obligation is imposed to light, buoy, or remove a wreck, will be liable for damage caused to any vessel by a neglect of this duty.(f) On the other hand, if the owner of a ship sunk, whether by his own default or not, abandons possession and control of her, there is no duty cast on him either to remove the wreck or to protect other vessels from coming into collision with it.(g)

§ 633. The superior officer of a Queen's ship is responsible for

(z) *The Bilbao*, Lush. 149; *The Cynthia*, 2 P. D. 52.

(a) *The Rhosina*, 10 P. D. 24, 131; *The Apollo*, (1891) A. C. 499; *Reney* v. *Magistrates of Kirkcudbright*, (1892) A. C. 264; *Turner* v. *Mersey Docks, &c.*, (1891) P. 216; (1892) P. 285; (1893) Ap. Ca. 468; and see *ante* § 228.

(b) Per Sir Montague Smith, in *The William Lindsay*, L. R. 5 P. C. 338.

(c) *The William Lindsay*, L. R. 5 P. C. 338.

(d) *The Belgic*, 2 P. D. 57.

(e) *Parnaby* v. *Lancaster Canal Co.*, 11 A. & E. 223; *Mersey Docks & Harbour Board* v. *Gibbs*, L. R. 1 H. L. 93.

(f) *Dormont* v. *Furness Railway Co.*, 11 Q. B. D. 496; *Gilbert* v. *Trinity House*, 17 Q. B. D. 795.

(g) *The Douglas*, 7 P. D. 151; *The Utopia* and *The Primula*, (1893) Ap. Ca. 492.

his own negligence, but not for that of an officer under his command, appointed by the same authority as himself. To such a case the maxim *respondeat superior* does not apply, as there can be no reason for making one man liable for the act of another whom he did not appoint or employ.(*h*)

Liability of officers of Queen's ships.

In cases of tort or damage committed by vessels of the Crown, the legal responsibility attaches to the actual wrongdoer, and the injured party must seek redress from the person who immediately causes the injury.(*i*)

The commanders of Queen's ships have, however, in cases where an appearance has been entered for them by order of the Admiralty, been condemned in causes of damage, where the collision has appeared to be the result of negligence in the management of their ships, although there was no direct personal interference on their part.(*k*)

Ships in tow.

§ 634. In the case of ships in tow, it appears to be clear that, when no directions are given by the ship in tow, the rule is, that the tug shall direct the course. The tug is the moving power, but it is under the control of the master or pilot on board the ship in tow.(*l*) Under an ordinary contract of towage the tow is therefore liable not only for the deficient equipment,(*m*) but also for the wrongful acts of the tug, unless they are done so suddenly as to prevent the tow from controlling them.(*n*) It is otherwise, however, where the governing as well as the motive power lies with the tug.(*o*)

But though the tug is ordinarily the agent or servant of the tow, they are not so identified with one another that the tow cannot recover against the tug that which she has been obliged to pay as compensation for the tug's negligence.(*p*)

There is an implied obligation in every contract of towage that the tug shall be efficient and properly equipped for the service.(*q*)

The tug is bound to use proper skill and diligence, and is liable, in the absence of any agreement to the contrary,(*r*) for any damage due to her wrongful act. When the contract to tow is made, the law implies an engagement that each vessel will perform its part in completing it;—that proper skill and diligence

(*h*) *Nicholson* v. *Mounsey*, 15 East, 384; Story on Agency, sects. 319, 321, 322; *Wright* v. *Lethbridge*, 63 L. T. 572; *The Mentor*, 1 C. Rob. 179.

(*i*) Per Dr. Lushington, in *The Athol*, 1 W. Rob. at 381.

(*k*) *The Volcano*, 2 W. Rob. 337; *The Birkenhead*, 3 W. Rob. 75; Maude & Pollock, 615.

(*l*) Per Sir Barnes Peacock, *Smith* v. *St. Lawrence, &c.*, L. R. 5 P. C. at 313; *The Isca*, 12 P. D. 34.

(*m*) *The Belgic*, 2 P. D. 57.

(*n*) *The Sinquasi*, 5 P. D. 241; *The Jane Bacon*, 27 W. R. 35; *The Niobe*, 13 P. D. 55.

(*o*) *The American* and *The Syria*, L. R. 4 Adm. 226; 6 P. C. 127; *The Stormcock*, 53 L. T. 53; *The Quickstep*, 15 P. D. 196.

(*p*) *The Stormcock*, 53 L. T. 53.

(*q*) *The Undaunted*, 11 P. D. 46.

(*r*) *The United Service*, 8 P. D. 56; 9 P. D. 3.

Ships in tow.

will be used on board each;—and that neither vessel by neglect or misconduct will create unnecessary risk to the other, or increase any risk which may be incidental to the service undertaken. If, in the course of the performance of the contract, any inevitable accident happens to the one without default on the part of the other, no cause of action will arise. If, on the other hand, the wrongful act of either occasions damage to the other, such wrongful act will create a responsibility in the party committing it, if the sufferer has not by any misconduct or unskilfulness on his part contributed to the accident.(*s*) Where both are found to blame for injury done to a third vessel, each will be severally liable for the entire damages.(*t*)

The relative liabilities of tug and tow for damage committed by either of them, while under the charge of a pilot compulsorily employed, have been already discussed in § 575.

Inevitable Accident.

General rule.

§ 635. Where the collision is the result of inevitable accident, then neither ship is liable for the consequences, either in the Admiralty Division,(*u*) or in a court of common law.(*x*) To adopt the words of Sir William Scott: If the accident "happen without blame being imputable to either party, as where the loss is occasioned by a storm or any other *vis major*, in that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree."(*y*)

Inevitable accident," what it is.

"An inevitable accident, in view of the law, is that state of circumstances which could not have been avoided by the exercise of ordinary skill, ordinary caution, and diligence. It is not necessary that there should be extraordinary skill or extraordinary precaution; but if the accident could have been avoided by ordinary skill, diligence, and precaution, then it is not an inevitable accident."(*z*) Thus the sudden breaking down of an apparatus in which there was an inherent latent defect would be an inevitable accident, in the absence of any negligence in the user of the apparatus.(*a*)

(*s*) Per Lord Kingsdown, *The Julia*, Lush. 231; *Smith* v. *St. Lawrence, &c.*, L. R. 5 P. C. at 314; *The Robert Dixon*, 4 P. D. 121; 5 P. D. 54; *Spaight* v. *Tedcastle*, 6 App. Ca. 217.

(*t*) *The Avon* and *The Thomas Joliffe*, (1891) P. 7.

(*u*) *The Plato* v. *The Perseverance*, Holt's Rule of the Road, 263; *The Hibernia*, 4 Jur. N. S. 1244; *The Woodrop Sims*, 2 Dods. at 85; *The Julia*, Lush. at 231.

(*x*) *Lack* v. *Seward*, 4 C. & P. 106; *Harris* v. *Anderson*, 14 C. B. N. S. 499.

(*y*) *The Woodrop Sims*, 2 Dods. at 85.

(*z*) Per Dr. Lushington, *The Plato*, Holt's Rule of the Road, 263; *The Calcutta*, 21 L. T. N. S. 768; *The Virgil*, 2 W. Rob. at 205; *The Marpesia*, L. R. 4 P. C. 212; *The Secret*, 26 L. T. N. S. 670; *The Europa*, 14 Jur. at 629; *The Lochlibo*, 3 W. Rob. at 318; *The Itinerant*, 2 W. Rob. 236; *The England*, 5 No. of Ca. at 176; *The Thornley*, 7 Jur. 659; *The Buckhurst*, 6 P. D. 152; *The Albano*, (1892) P. at p. 427.

(*a*) *The Virgo*, 35 L. T. 519.

"The master is bound to take all reasonable precautions to prevent his ship doing damage to others. It would be going too far to hold his owners to be responsible, because he may have omitted some possible precaution which the event suggests he might have resorted to."(*b*)

"Inevitable accident," what it is.

But an accident is not inevitable merely because it could not be prevented at the very moment at which it occurred. Where it might have been prevented, if proper and reasonable measures had been adopted in due time, it is not inevitable.(*c*)

Burden of proof.

§ 636. Where, in a cause of collision, the defence of inevitable accident is raised, the burden of proof lies, in the first instance, on those who bring the suit against the vessel and seek to be indemnified for damage sustained; and the onus of proving inevitable accident does not attach to the vessel proceeded against, until a *primâ facie* case of negligence and want of due seamanship is shown.(*d*) But where the defence of inevitable accident is set up on behalf of a ship *primâ facie* to blame for a collision, the defence, to succeed, must be supported by proof that everything was done by such ship, which could and ought to have been done, to avoid the collision; and this, although the ship was in some degree disabled and so less manageable than she would otherwise have been.(*e*)

Thus, if A is solely to blame for a collision with B, in consequence of which B afterwards comes into collision with C, B is not liable to C if she has done what she could to prevent the second collision.(*f*) But if there was joint blame for the first collision, and B was driven in consequence against C, then B would be responsible, however innocent as regards the second collision.(*g*)

What Remedies the Owners of Injured Ships have in the Court.

§ 637. The jurisdiction of the High Court extends to all wrongs committed on the high seas.(*h*)

And recent statutes have not only given the Admiralty Division jurisdiction within the body of a county, but have also

(*b*) Per Sir Montague Smith, in *The William Lindsay*, L. R. 5 P. C. at 343.

(*c*) *The Uhla*, 19 L. T. N. S. 89; *The Virgil*, 2 W. Rob. at 205; *The Juliet Erskine*, 6 No. Cas. 633; *The Pladda*, 2 P. D. 34; *The City of Peking*, 14 Ap. Ca. 40.

(*d*) *The Bolina*, 3 No. of Ca. 208; *The Marpesia*, L. R. 4 P. C. 212.

(*e*) *The Calcutta*, 21 L. T. N. S. 768; *The Secret*, 26 L. T N. S. 670; *The George*, 2 W. Rob. 386; *The Merchant Prince*, (1892) P. 179.

(*f*) *The Venus*, Pritchard's Adm. Dig. I. 184; *The Hibernia*, 4 Jur. N. S. 1244.

(*g*) *The Venus*, Pritchard's Adm. Dig. I. 184; *Seccombe* v. *Wood*, 2 Moo. & R. 290; *The Kjobenhavn*, 30 L. T. 136.

(*h*) See per Lord Stowell, *The Hercules*, 2 Dods. at 371; *The Ruckers*, 4 C. Rob. 73, 74 n.; *The Leon*, 6 P. D. 148. By 31 & 32 Vict. c. 71, s. 3, as amended by 32 & 33 Vict. c. 51, s. 4, jurisdiction is given to certain County Courts over all claims for damage to ships by collision or otherwise, where the amount claimed does not exceed £300.

enabled it to entertain a suit for collision between British or foreign ships in foreign waters.(*i*)

The Admiralty Court Act, 1861,(*k*) enacts:

7. The High Court of Admiralty shall have jurisdiction (*l*) over any claim for damage done by any ship.

This section, however, does not give the Admiralty Division jurisdiction to entertain an action *in rem* for damages for loss of life under Lord Campbell's Act.(*m*)

And by the Merchant Shipping Act, 1854:(*n*)

Power of judge of Court of Record or Admiralty to arrest foreign ship that has occasioned damage.

527. Whenever any injury has, in any part of the world, been caused to any property (*o*) belonging to her Majesty or to any of her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, it shall be lawful for the judge of any Court of Record in the United Kingdom, or for the judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain (*p*) such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.(*q*)

Power in certain cases to detain ship before application made to judge.

528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

Who to be defendant to suit in such cases.

529. In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship

(*i*) 24 Vict. c. 10, s. 7; 17 & 18 Vict. c. 104, s. 527; *The Courier*, Lush. 541; *The Diana*, Lush. 539; *The Mali Ivo*, L. R. 2 Adm. 356.

(*k*) 24 Vict. c. 10.

(*l*) *The Sylph*, L. R. 2 Ad. 24; *The Clara Killam*, L. R. 3 Ad. 161; *The Industrie*, L. R. 3 Ad. 303.

(*m*) *Smith* v. *Brown*, L. R. 6 Q. B. 729; *The Vera Cruz*, 10 Ap. Ca. 59.

(*n*) 17 & 18 Vict. c. 104.

(*o*) This section does not extend to injury to the person. *Harris* v. *Franconia*, 2 C. P. D. 173.

(*p*) 39 & 40 Vict. c. 80, s. 34, prescribes a penalty of one hundred pounds on the master, and on the owner also if privy to the offence, where the ship proceeds to sea after service on the master of notice of detention, unless released by competent authority.

(*q*) But in the case of an "exempted mail ship" under the Mail Ships Act, 1891, the ship itself cannot be arrested, the remedy being against the security given under s. 3 of the Act. See 54 & 55 Vict. c. 31, ss. 3, 5.

that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding.

§ 638. Proceedings to recover compensation in the Court of Admiralty for damage caused by a collision may be either—

1. By an action *in rem*, or,
2. By an action *in personam*.

1. *By an action in rem.*

The maritime lien for damage by collision.

The usual mode of proceeding in a case of collision in the Admiralty Court is by arresting the ship in an action *in rem*, founded upon a maritime lien.(*r*) This lien attaches to the ship and her freight at the moment of collision, and is co-extensive with the owner's interest in the vessel.(*s*) "It travels with the thing into whosesoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding *in rem*, relates back to the period when it first attached."(*t*) Though not subject to a statutory limitation, it may be lost by negligence or delay, where the rights of third parties are compromised,(*u*) but where reasonable diligence is used, and the proceedings are had in good faith, it may be enforced even against a *bonâ-fide* purchaser without notice.(*x*) And it takes precedence of the liens of pilotage and bottomry, and of wages, except where earned on a British ship subsequent to the collision.(*y*)

To what it attaches.

§ 639. This lien attaches to the ship and all her appurtenances; to the freight which was in the course of being earned at the time of the collision, and which has actually accrued due;(*z*) and to subsequent accretions in the value of the ship, arising from repairs done after the collision, but before the arrest, by the owner at his own expense.(*a*) But where the repairs have been effected by a stranger, upon the security of a bottomry bond, the case seems to be different.(*b*).

Where a ship was under separate charter-parties as to her

(*r*) *Ante* § 74.

(*s*) *The Aline*, 1 W. Rob. 111; *The Volant*, 1 W. Rob. at 388.

(*t*) *The Bold Buccleugh*, 7 Moo. P. C. at 284.

(*u*) *The Bold Buccleugh*, 7 Moo. P. C. at 285; *The Europa*, B. & L. 89; 2 Moo. P. C. N. S. 1; *The Kong Magnus*, (1891) P. 223.

(*x*) *The Bold Buccleugh*, 3 W. Rob. 220; 7 Moo. P. C. 267; *The Mellona*, 3 W. Rob. at 21; *The Nymph*, Swab. 86; *The Griefswald*, Swab. at 435; *The Charles Amelia*, L. R. 2 Ad. 330.

(*y*) *The Aline*, 1 W. Rob. 111; *The Linda Flor*, Sw. 309; *The Benares*, 7 N. of C. Supp. 50; *The Elin*, 8 P. D. 129. There is no maritime lien for towage; *Westrup* v. *Great Yarmouth Co.*, 43 Ch. D. 241.

(*z*) *The Leo*, Lush. 444; *The Roecliff*, L. R. 2 Adm. 363; *The Flora*, L. R. 1 Adm. 45; *The Orpheus*, L. R. 3 Adm. 308.

(*a*) *The Aline*, 1 W. Rob. 111; *The St. Olaf*, L. R. 2 Ad. 360.

(*b*) *The Aline*, 1 W. Rob. 111.

To what the maritime lien for damage attaches.

outward and homeward cargoes, and came into collision with another ship whilst on the outward voyage, it was held that the freight for the homeward voyage, when it had accrued due, was liable to arrest for the damage.(*c*)

The lien does not attach to the cargo on board at the time of collision. The cargo, therefore, cannot be sued for damage, even although it belongs to the shipowner, but it may be arrested for unpaid freight. It will be entitled to release on payment of the freight due into court.(*d*) And where at the time of the collision the ship had a cargo on board which belonged to the shipowner, and at the time of the arrest a portion only of such cargo remained on board, the Court refused to release the remainder of the cargo until the freight due upon the whole cargo was paid into court.(*e*) A plaintiff in a cause of collision suing ship and freight may always arrest the cargo for freight. and if freight be not due, will not therefore incur costs and damages. On affidavit by the shipowner or master that no freight is due, and that he is ready to carry the cargo on to its destination, the shipowner is entitled to have the cargo released.(*f*)

Where the ship is under charter.

§ 640. Whether the lien attaches in cases where the owners, by reason of their having entrusted the control of the ship to others, would not be liable at common law, has been much discussed by the courts.(*g*) As we have already seen,(*h*) the owners are not responsible where a pilot is employed by compulsion of law. The cases of tug and tow, where the tug has entire control of the navigation, and of a demise of the ship, where the charterer undertakes her entire management, present greater difficulty. The existing state of the law on these points is thus summarised by Sir James Hannen: "The maritime lien arising from collision is not absolute. It is a *primâ facie* liability of the ship, which may be rebutted by showing that the injury was done by the act of some one navigating the ship not deriving his authority from the owners." . . . . "By the maritime law, charterers, in whom the control of the ship has been vested by the owners, are deemed to have derived their authority from the owners, so as to make the ship liable for the negligence of the charterers, who are *pro hâc vice* owners." . . . . "I draw from these premises the conclusion that whatever is a good defence of the charterers against the claim of the injured person is a good defence for the ship, as it would have been if the same defence had arisen between the owners and the injured person."(*i*)

(*c*) *The Orpheus*, L. R. 3 Adm. 208.
(*d*) *The Victor*, Lush. 72; *The Leo*, Lush. 444; *The Flora*, L. R. 1 Adm. 45.
(*e*) *The Roecliff*, L. R. 2 Adm. 363.
(*f*) *The Flora*, L. R. 1 Adm. 45.
(*g*) *The Druid*, 1 W. Rob. 391; *The Ruby Queen*, Lush. 266; *The Ticonderoga*, Sw. 215; *The Orient*, L. R. 3 P. C. 696; *The Lemington*, 2 Asp. 475; *The Parlement Belge*, 5 P. D. at 218.
(*h*) *Ante* § 569.
(*i*) *The Tasmania*, 13 P. D. 110.

The remedy afforded by proceedings *in rem* cannot extend beyond the property proceeded against. Where the owners do not appear, the decree must be confined to the ship and freight, and where the owners do appear, they cannot be made responsible, except for costs, beyond the value of the ship and freight.(*k*)

2. *By an action in personam.*

Proceedings against owners or master personally.

§ 641. Redress for injuries arising from collision may also be obtained in the Admiralty Division by proceedings *in personam* against the owners, master, or pilot,(*l*) and in cases where the ship is lost, or for some other cause cannot be arrested, a suit *in personam* is the only available process and remedy. A defendant in a suit *in personam* is liable to the full extent of the damage done.(*m*)

Though the Court will not allow an action *in personam* to be engrafted on proceedings *in rem*, so as to make good any excess of damage beyond the proceeds of the ship, yet where there is a remedy both *in personam* and *in rem*, a person who has resorted to one of the remedies may, failing full satisfaction thereby, resort to the other.(*n*)

Limitation of Liability.

Limitation of liability.

§ 642. The Merchant Shipping Act Amendment Act, 1862,(*o*) following out a principle which had been laid down by previous Acts, imposes by the following provisions a limit to the liability of shipowners in cases of damage:

Shipowners' liability limited.

54. The owners (*p*) of any ship,(*q*) whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity(*r*): (that is to say)

(1) Where any loss of life or personal injury is caused to any person being carried in such ship;

(2) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship;

(3) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat;(*s*)

(*k*) Williams & Bruce, Adm. Pract. 81; *The John Dunn*, 1 W. Rob. 159; *The Victor*, Lush. 72; *The Volant*, 1 W. Rob. 383; *The Wild Ranger*, Br. & L. 84; *The Duchesse de Brabant*, Sw. 264.

(*l*) A County Court has no jurisdiction to entertain such an action *in personam* against a pilot; *R.* v. *Judge of City of London Court*, (1892) 1 Q. B. 273. But see *The Mersey Docks, &c.*, v. *Turner*, (1893) Ap Ca. at p. 486.

(*m*) Williams & Bruce, Adm. Pract. 82; *The Volant*, 1 W. Rob. 383; *The Clara*, Swab. at 3; see *The Zephyr*, 11 L. T. 351.

(*n*) *The Hope*, 1 W. Rob. 154; *The Zephyr*, 11 L. T. 351; *The Orient*, L. R. 3 P. C. 696.

(*o*) 25 & 26 Vict. c. 63.

(*p*) Includes unregistered as well as registered owners; *The Spirit of the Ocean*, B. & L. 336. A railway company carrying passengers and goods, partly by rail and partly by their own ships, can claim the benefit of this section; *London and South-Western Railway Co.* v. *James*, L. R. 8 Ch. 241.

(*q*) This means "a recognised British ship" within the meaning of s. 516 of 17 & 18 Vict. c. 104. See *The Andalusian*, 3 P. D. 182.

(*r*) *The Obey*, L. R. 1 Adm. 102; *The Cricket*, 48 L. T. 535.

(*s*) *The George and Richard*, L. R. 3 Ad. 466.

Shipowners' liability limited.

(4) Where any loss or damage is by reason of the improper navigation (*t*) of such ship as aforesaid caused to any other ship (*tt*) or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat;

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage, nor in respect of loss or damage to ships, goods, merchandise, or other things (*u*) whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds (*x*) for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without reduction on account of engine room :(*y*)

In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship:

In the case of any foreign ship which has not been and cannot be measured under British law, the Surveyor-General of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on receiving from or by direction of the court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to British law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

The Principles upon which the Court regulates the Right to Compensation.

§ 643. The law applicable to cases of collision on the high seas is the maritime law as administered by the Admiralty Division of the High Court, and not the common law of the realm.(*z*)

The rules.

The four chief rules which guide the Admiralty Division in these cases have been laid down by Lord Stowell in the following terms :(*a*)

"There are four possibilities under which an accident of this sort may occur.

"*In the first place*, it may happen without blame being imputable to either party, as where the loss is occasioned by a storm, or any other *vis major*. In that case, the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree.

"*Secondly*, a misfortune of this kind may arise where both

(*t*) *The Warkworth*, 9 P. D. 20, 145.

(*tt*) As to the application of this rule where damage is caused to more than one other ship, see *The Creadon*, 54 L. T. 880; *The Schwan*, (1892) P. 419.

(*u*) As to apportionment between life and goods claimants, see *The Victoria*, 13 P. D. 125.

(*x*) With interest, *Smith* v. *Kirby*, 1 Q. B. D. 131.

(*y*) *The Franconia*, 3 P. D. 164; *The Palermo*, 10 P. D. 21; *The Petrel*, (1893) P. 320.

(*z*) *The Leon*, 6 P. D. 148; *Chartered Bank of India* v. *Netherlands Steam Co.*, 10 Q. B. D. 521.

(*a*) *The Woodrop Sims*, 2 Dods. at 85.

parties are to blame—where there has been a want of due diligence or of skill on both sides. In such a case, the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them.

The principle on which the Court regulates the right to compensation.

"*Thirdly*, it may happen by the misconduct of the suffering party only; and then the rule is, that the sufferer must bear his own burden.

"*Lastly*, it may have been the fault of the ship which ran the other down; and in this case the injured party would be entitled to an entire compensation from the other."

§ 644. With reference to the first rule it may be observed, that the mere happening of a collision, without more, is no evidence of negligence on the part of the ship sued, and that in order to fix such ship with the loss, it is necessary for the party suing to give evidence of the absence of reasonable care and maritime skill on the part of the crew of the ship sued.(*b*) Where a reasonable doubt exists as to the cause of the collision, and there has been no infringement of the Regulations, the court will regard it as the result of accident, and dismiss the suit.(*c*)

Collision without more, no evidence of negligence.

§ 645. The second rule is founded upon the principle which from ancient times has been applied in the Admiralty Court, that damage occasioned by a common fault shall be considered a common loss, to be equally borne by both parties.(*d*)

Division of loss where both to blame.

If the owner of one ship bring an action against the owner of another ship for damage by collision, and both ships be found to blame, the party proceeding recovers only a moiety of his damage without costs. If there is a cross-action, and both ships are to blame, the damages are equally divided, each party recovering half his own loss, and bearing his own costs.(*e*) But if one of the ships, by compulsion of law, had on board a pilot whose default contributed to the accident, the owner of that ship is entitled to recover a moiety of his damage, without any deduction on account of the damage sustained by the other.(*f*)

So, on the same principle, where both ships are found to blame, in an action by the owners of cargo on ship A against ship B, the plaintiffs can only recover one half of the loss sustained by them.(*g*)

In action by cargo owners.

This rule as to the equal division of the loss is strictly applied in all cases in which both ships are found to be in default, with-

(*b*) *The Catherine of Dover*, 2 Hagg. at 153; *The Bolina*, 3 No. Ca. 208; *The Mary Stewart*, 2 W. Rob. 244.

(*c*) *The Catherine of Dover*, 2 Hagg. at 154.

(*d*) *The Linda*, Sw. 306; *The Immaganda*, 8 Moo. P. C. 75; *The Aurora*, Lush. 327; *The Swanland*, 2 Sp. at 110 (*n*); *Chapman* v. *Royal Netherlands Steam Co.*, 4 P. D. at 160.

(*e*) *The Milan*, Lush. at 398; *The Agra*, L. R. 1 P. C. 501.; *The Arthur Gordon*, Lush. at 281; *The City of Manchester*, 5 P. D. 221.

(*f*) *The Hector*, 8 P. D. 218.

(*g*) *The Milan*, Lush. 388; *Chartered Bank of India* v. *Netherlands Steam Co.*, 10 Q. B. D. 521.

The principles on which the Court regulates the right to compensation.

out reference to the degree of blame which may attach to the one or the other, for the court cannot apportion the damages according to the quantum of neglect.(*h*)

Contributory negligence.

It does not follow, however, that both ships will be found to be in default, even though both may have been guilty of negligence contributing to the collision or the damage ensuing thereon. For in cases not covered by the statutory penalty which attaches to an infringement of the Regulations,(*i*) the common law rule of contributory negligence applies, and the plaintiff can recover nothing, though the defendant be guilty of negligence contributing to the collision, if the plaintiff, by the exercise of ordinary care, exerted up to the moment of the collision, could have avoided it.(*k*) And by parity of reasoning, if the collision be due entirely to the negligence of A, and the damage wholly to the negligence of B, A can recover nothing against B if by the exercise of ordinary care, exerted up to the moment of the collision, he could have avoided the damage consequent on B's negligence.(*l*) But if in such a case B's negligence is not apparent to A so as to throw upon him the obligation of avoiding its consequences in addition to the duty of not himself being guilty of any negligence, the court will hold both vessels to blame, and the loss will be divided.(*m*)

Where plaintiff alone to blame, no compensation.

§ 646. In cases falling within the third rule, where the plaintiff is alone to blame for the collision, the court will dismiss the action with costs,(*n*) and pronounce for the counterclaim, if there be one.

(*h*) *The Swanland*, 2 Sp. 110 (*n*); *The Milan*, Lush. at 401. Mr. Rothery, formerly Registrar of the Court of Admiralty, has thus explained the working of this rule:—

If A and B are the owners of two ships, worth respectively £10,000 and £50,000, and the ships come into collision, and both are alike to blame for the collision; then—

If A's ship goes down and B's is uninjured, A is entitled to recover one-half of his loss, or £5000, from B;—

If B's ship goes to the bottom, and A's is uninjured, then B is entitled to receive £25,000 from A for a moiety of his damage;—

If both go to the bottom, then A is entitled to receive £5000 from B for a moiety of his damage, and B is entitled to receive £25,000 from A for a moiety of his damage.

Thus each loses £30,000.

In plain words, an owner who has been partly the cause of the injury of his own ship, is allowed to recover partial compensation.

But this extraordinary rule has prevailed in Europe since the fourteenth century, and has been adopted by many nations. See The Consolato del Mare, Pardessus, vol. i. 174; The Laws of Oleron, Pardessus, vol. i. 334; Les Us et Coutumes de la Mer, 1671 (Ordonnances, 50 & 70); The Black Book of the Admiralty, edited by Twiss, 1871, Art. 15, p. 108; Les Coutumes Maritimes d'Amsterdam, Arts. 12, 13, & 14, Pardessus, vol. i. 412.

It was introduced into France by the laws of Oleron; into Germany and the Northern States by the Ordonnances of Wisbuy; into Spain by the Siete Partidas; into England by the Black Book of the Admiralty; and into the Low Countries by the Jugements de Damme and the Coutumes Maritimes d'Amsterdam.

This law is now administered by the three most important maritime powers—England, the United States, and France, and by all other maritime countries.

(*i*) 36 & 37 Vict. c. 85, s. 17; *post* § 656; *The Hochung* and *The Lapwing*, 7 Ap. Ca. 512; *The Arklow*, 9 Ap. Ca. 136.

(*k*) *Cayzer, Irvine & Co.* v. *The Carron Co.*, 9 Ap. Ca. 873; *The Monte Rosa*, (1893) P. 23.

(*l*) *The Monte Rosa*, (1893) P. 23.

(*m*) *The Margaret*, 6 P. D. 76.

(*n*) *The Ligo*, 2 Hagg. 356; *The Catherine of Dover*, 2 Hagg. at 154.

If the ship sued, although not to blame for the collision, has been guilty of misconduct in neglecting to render assistance after the collision, the court, while dismissing the action, will either refuse costs, or condemn the defendant in costs.(*o*) Where a ship is arrested by Admiralty process, and the plaintiff fails to establish his case, no damages for detention occasioned by the arrest will be allowed to the defendant, in the absence of *mala fides* or malicious negligence.(*p*) But if the seizure of the vessel be the result of *mala fides* or *crassa negligentia* implying malice, proof of actual damage is not necessary to sustain an action in a Court of Admiralty.(*q*) And it would appear that an action lies also at common law for the malicious arrest of a ship by Admiralty process.(*r*)

The principles on which the Court regulates the right to compensation.

§ 647. In cases falling within the fourth rule, where the defendant is alone to blame, the general principle is, that the injured person is entitled, subject to the limitations imposed by statute, to full compensation for all damage and loss occasioned by collision, and to his costs; *restitutio in integrum* being the governing maxim.(*s*)

Where defendant alone to blame, full compensation.

The Principles upon which the Court proceeds in Assessing the Amount of Compensation.

§ 648. The principle upon which the court proceeds in assessing the amount of damages is, that whenever damage has been done by one ship to another, the parties are to be restored into a state similar to that in which they were before the accident; that is to say, they are to have the full value of the property lost.(*t*) Where the ship is only damaged, her owners are entitled to a complete repair of all the damage done, notwithstanding that the result may be to render the ship more valuable than she was prior to the collision.(*u*) But such repairs only will be allowed as become necessary on account of the collision.(*x*)

General rule.

The court may award full compensation for the damage, both direct and consequential, which has been sustained by a collision, subject of course to the statutory limitations of the liability of owners given above.(*y*) Thus, the loss of the benefit

(*o*) See 36 & 37 Vict. c. 85, s. 16, *post* § 687; *The Celt*, 3 Hagg. 321; *The Catalina*, 2 Spinks, 23.

(*p*) *The Evangelismos*, Swab. 378; *The Peri*, 32 L. J. Adm. 46; *The Strathnaver*, 1 Ap. Ca. 58; and see *The Collingrove*, 10 P. D. 158.

(*q*) *The Walter D. Wallett*, (1893) P. 202.

(*r*) *The Evangelismos*, Sw. 378; *The Strathnaver*, 1 Ap. Ca. at p. 67; *The Walter D. Wallett*, (1893) P. 202.

(*s*) *The Gazelle*, 2 W. Rob. at 281; *The Clyde*, Swab. 23; *The Matchless*, 10 Jur. 1017; Williams & Bruce, 89.

(*t*) *The Clyde*, Swab. 23; *The Gazelle*, 2 W. Rob. at 281.

(*u*) *The Pactolus*, Swab. 173; *The Clyde*, Swab. 23; *The Bernina*, 55 L. T. 781.

(*x*) *The Alfred*, 3 W. Rob. at 239; *The Princess*, 52 L. T. 932.

(*y*) 25 & 26 Vict. c. 63, s. 54; *supra* § 642.

The principles on which the Court assesses the amount of compensation.

of an agreement, the performance of which has been interfered with by the collision, may be taken into account by the court,(z) but no damages will be allowed in respect of loss of market due to delay in the arrival of the cargo.(a)

Loss of freight,(b) fishing profits,(c) and actual expenses incurred through the detention, such as lodging, maintenance, and wages of the crew,(d) will also be taken into consideration in assessing the damage. But a general average contribution from ship to cargo, in respect of goods jettisoned in consequence of a collision, is not recoverable from the wrongdoing ship, the obligation to contribute not being directly due to the collision, but arising from the relation between ship and cargo.(e)

What consequential damage may be recovered.

§ 649. A vessel which causes a collision will not be held liable for any consequential damage, which the injured ship might have avoided by the exercise of ordinary care, nautical skill, and courage.(f) But, to prevent the plaintiffs recovering, it must be shown that they neglected to do what a reasonable man would have done under similar circumstances, when he had no other judgment but his own to resort to. The mere fact that they did not adopt the best and wisest measures will not prevent their recovering.(g)

Thus, if a collision takes place between two ships by the negligence of the crew of the defendant's ship, whereby the plaintiff's ship is injured, and afterwards and before any effort has been made to save the plaintiff's ship, her master and crew unjustifiably abandon her, and she is consequently totally lost, the defendant will not be liable for such total loss, but only for the expense which would have been incurred in making good the actual damage occasioned by the collision.(h)

And if, owing to a collision, a ship becomes unmanageable, and in consequence suffers further damage, compensation for the whole loss will be awarded; but the defendants cannot be made liable for damage which, although incidental to the collision, might clearly have been prevented by the exercise of ordinary nautical skill and common care on the part of the crew of the plaintiff's ship.(i)

Burden of proof.

As we have already seen,(k) the burden of proving that the

(z) *The Betsy Caines*, 2 Hag. 28; *The Yorkshireman*, 2 Hag. 30; *The Star of India*, 1 P. D. 466; *The Argentino*, 13 P. D. 61, 191; 14 Ap. Ca. 519.

(a) *The Notting Hill*, 9 P. D. 105. See *ante* § 327.

(b) *The Yorkshireman*, 2 Hag. 30; *The Canada*, Lush. 586.

(c) *The Risoluto*, 8 P. D. 109.

(d) *The City of Peking*, 15 Ap. Ca. 438.

(e) *The Marpessa*, (1891) P. 403.

(f) *The Thuringia*, 41 L. J. Adm. 44; *The Flying Fish*, B. & L. 436; *The Linda*, Sw. 306; *Tindal* v. *Bell*, 11 M. & W. 228; *The Hansa*, 58 L. T. 530.

(g) *The Linda*, Sw. 306; *Tindal* v. *Bell*, 11 M. & W. 228.

(h) *The Thuringia*, 41 L. J. Adm. 44; *The Flying Fish*, B. & L. 436.

(i) *The Eolides*, 3 Hagg. 367; *The Flying Fish*, B. & L. 436; Williams & Bruce, 104.

(k) *Ante* § 629.

total loss resulted immediately from want of ordinary nautical skill and courage, and not directly from the collision, lies upon the original wrongdoers.(*l*) Accordingly, if a ship is disabled by collision, and shortly afterwards and while in a disabled state, sinks or drives ashore, and so is lost or receives further injury, the court will *primâ facie* presume, in the absence of evidence to the contrary, that all the subsequent damage was occasioned by the collision, and not by the mismanagement of the persons on board.(*m*)

The principles on which the Court assesses the amount of compensation.

§ 650. Where after a collision the owner or master of the injured ship spends more money in raising or repairing her than she is worth, if he has not acted prudently, even although he has acted *bonâ fide*, the court will not suffer the wrongdoing ship to be held responsible for more than a total loss. Thus, where a ship carrying cargo was sunk in a collision, and was raised and repaired, and the costs of the repairs exceeded the original value of the ship, the costs of the repairs were disallowed, and the amount to be paid as compensation was calculated thus:—the value of the ship immediately before the collision was ascertained, and to this was added a sum representing interest from the time when the cargo would in ordinary course have been delivered, and a sum equal to the cost incurred in raising and inspecting the wreck; from the gross sum thus ascertained the value of the wreck was deducted, and the remainder was declared to be the measure of damages in the action.(*n*)

Costs of raising or repairing.

If, in such a case, the master adopts the more prudent course of selling the ship, his owners will be entitled to recover her value previous to the collision, subject to a deduction equal to the amount produced by her sale.(*o*)

If sold.

§ 651. If a vessel, abandoned by her crew under reasonable apprehension of danger in consequence of a collision, be afterwards brought into port by another ship, the amount paid for salvage may be recovered against the ship found to blame for the collision.(*p*) And in such a case the costs of a salvage action,(*q*) though not the commission paid for bail, will be recoverable as part of the damages.(*r*)

Salvage.

§ 652. The court will award interest on the amount recovered,(*o*) even where the owner's liability is limited under 25 & 26 Vict. c. 63, s. 54. In case of a total loss, if the ship is carrying cargo, interest is allowed on the value of the ship and

Interest.

(*l*) *The Thuringia*, 41 L. J. Ad. 44; *The Linda*, Sw. 306; *The Kingston-by-Sea*, 3 W. Rob. at 157; *The Pensher*, Sw. 211.

(*m*) *The Mellona*, 3 W. Rob. 7.

(*n*) *The Empress Eugenie*, Lush. 138; Williams & Bruce, 100.

(*o*) *The South Sea*, Sw. 141. As to when the master may sell the ship, see §§ 412–416, *ante*.

(*p*) *The Blenheim*, 1 Sp. 285; *The Legatus*, Sw. 168; *The Pensher*, Sw. 211.

(*q*) *The Legatus*, Sw. 168.

(*r*) *The British Commerce*, 9 P. D. 128.

The principles on which the Court assesses the amount of compensation.

freight from the time when the ship would probably have reached her port of destination. If the ship is not carrying cargo, interest is allowed from the date of the collision.(s) And the court will also allow interest on the money expended in repairs, from the date of payment.(t)

Demurrage.

§ 653. In cases of partial damage, compensation will be awarded by way of demurrage for the time during which the ship is necessarily delayed for the purpose of effecting the repairs rendered requisite by the collision, and of transacting business unquestionably connected with the collision;(u)—for those gains, which in the ordinary course of the employment of the ship, would have been made, and which under the circumstances have been lost;(x)—and also for the expenses consequent upon the detention of the ship.(y)

But in calculating the amount of demurrage and of compensation for the loss of freight, deduction must be made for such disbursements as would necessarily be incurred in earning it.(z)

The Statutory Provisions and Regulations now in force for preventing Collisions at Sea.

§ 654. Statutory regulations with the object of preventing collisions at sea were first prescribed by the Legislature in 1846, but previous to that date necessity and general usage resulting therefrom had recognised certain specific rules for governing the conduct of ships at sea. The existing regulations are made under the Merchant Shipping Act Amendment Act, 1862,(a) the material sections of which are as follows:

The statutory provisions.

25. On and after the first day of June one thousand eight hundred and sixty-three, or such later day as may be fixed for the purpose by Order in Council, the Regulations contained in the Table marked (C) in the Schedule hereto shall come into operation, and be of the same force as if they were enacted in the body of this Act; but her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, annul or modify any of the said Regulations, or make new Regulations (b) in addition thereto or in substitution therefor; and any alterations in or additions to such Regulations made in manner aforesaid shall be of the same force as the Regulations in the said Schedule.

Regulations to be published.

26. The Board of Trade shall cause the said regulations, and any alterations therein or additions thereto hereafter to be made, to be

(s) *The Amalia*, 34 L. J. Ad. 21; *Straker* v. *Hartland*, 34 L. J. Ch. 122; *The Northumbria*, L. R. 3 Ad. 6; *Smith* v. *Kirby*, 1 Q. B. D. 131.

(t) *The Hebe*, 2 W. Rob. 530.

(u) *The City of Buenos Ayres*, 25 L. T. 672.

(x) *The Black Prince*, Lush. at 574.

(y) *The Inflexible*, Sw. at 204; *The City of Buenos Ayres*, 25 L. T. 672.

(z) *The Gazelle*, 2 W. Rob. 279; *The Canada*, Lush. 586. See also *The Thyatira*, 8 P. D. 155.

(a) 25 & 26 Vict. c. 63.

(b) See the regulations now in force under an Order in Council of 11th Aug. 1884; *infra* §§ 658 *et seq.*

printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same; and production of the Gazette in which any Order in Council containing such Regulations, or any alterations therein or additions thereto, is published, or of a copy of such Regulations, alterations, or additions, signed or purporting to be signed by one of the Secretaries or Assistant-Secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such Regulations, alterations, or additions.

The statutory provisions.

27. All owners and masters (*c*) of ships shall be bound to take notice of all such Regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights and to use no other fog signals than such as are required by the said Regulations; and in case of wilful default, the master, or the owner of the ship, if it appear that he was in such fault, shall, for each occasion upon which such Regulations are infringed, be deemed to be guilty of a misdemeanor.

Owners and masters bound to obey them.

28. In case any damage to person or property arises from the non-observance by any ship of any Regulation made by or in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the Regulation necessary.

Breaches of regulations to imply wilful default of person in charge.

30. The following steps may be taken in order to enforce compliance with the said Regulations: (that is to say)

Inspection for enforcing regulations.

(1) The surveyors appointed under the [fourth] part (*d*) of the principal Act,(*e*) or such other persons as the Board of Trade may appoint for the purpose, may inspect any ships for the purpose of seeing that such ships are properly provided with lights and with the means of making fog signals in pursuance of the said Regulations, and shall for that purpose have the powers given to inspectors by the fourteenth section of the principal Act;

(2) If any such surveyor or person finds that any ship is not provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same;

(3) Every notice so given shall be communicated in such manner as the Board of Trade may direct to the collector or collectors of customs at any port or ports from which such ship may seek to clear, or at which her transire is to be obtained; and no collector to whom such communication is made shall clear such ship outwards, or grant her a transire, or allow her to proceed to sea, without a certificate under the hand of one of the said surveyors or other persons appointed by the Board of Trade as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog signals in pursuance of the said regulations.(*f*)

31. Any rules concerning the lights or signals to be carried by vessels

(*c*) 17 & 18 Vict. c. 104, s. 4, exempts her Majesty's ships from the application of these regulations, but the Queen's Advocate, in the case of H.M.S. *Supply*, (12 L. T. 799), stated, "that although those in charge of her Majesty's ships were not bound in law by such regulations, instructions had nevertheless been issued to them, which were precisely in accordance with the same."

(*d*) See 35 & 36 Vict. c. 73, s. 13, *ante* § 597.

(*e*) 17 & 18 Vict. c. 104.

(*f*) See 39 & 40 Vict. c. 80, ss. 14, 21, *ante* §§ 602, 594.

Statutory provisions. Rules for harbours under local Acts to continue in force. In harbours and rivers where no such rules exist they may be made.

navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any local Act, shall continue and be of full force and effect, notwithstanding anything in this Act or in the schedule thereto contained.

32. In the case of any harbour, river, or other inland navigation for which such rules are not and cannot be made by or under the authority of any local Act, it shall be lawful for her Majesty in Council, upon application from the harbour trust or body corporate, if any, owning or exercising jurisdiction upon the waters of such harbour, river, or inland navigation, or, if there is no such harbour trust or body corporate, upon application from persons interested in the navigation of such waters, to make rules concerning the lights or signals to be carried, and concerning the steps for avoiding collision to be taken by vessels navigating such waters; and such rules, when so made, shall, so far as regards vessels navigating such waters, have the same effect as if they were regulations contained in table (C) in the schedule to this Act, notwithstanding anything in this Act or in the schedule thereto contained.(*g*)

Foreign ships in British jurisdiction to be subject to regulations.

§ 655. As to foreign ships the Act provides:

57. Whenever foreign ships are within British jurisdiction, such regulations (*h*) for preventing collision as are for the time being in force under this Act, and all provisions of this Act relating to such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any British court of justice concerning matters happening within British jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were British ships.

Regulations when adopted by a foreign country may be applied to its ships on the high seas.

58. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that such regulations (*h*) for preventing collision as are for the time being in force under this Act, or any of the said regulations, or any provisions of this Act relating to collisions, should apply to the ships of such country, when beyond the limits of British jurisdiction, her Majesty may, by Order in Council, direct that such regulations, and all provisions of this Act which relate to such regulations, and all such provisions as aforesaid, shall apply to the ships of the said foreign country, whether within British jurisdiction or not.(*i*)

Effect of Order in Council.

61. Whenever an Order in Council has been issued under this Act, applying any provision of this Act, or any regulation made by or in pursuance of this Act to the ships of any foreign country, such ships shall in all cases arising in any British court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were British ships.

§ 656. The effect of an infringement of any of the regulations on the liability of a ship in case of collision is thus prescribed by the Merchant Shipping Act, 1873:(*k*)

(*g*) Various bye-laws have been made under this section.

(*h*) See regulations now in force, *post* § 658 *et seq.*

(*i*) Under this section various Orders in Council have been made applying the regulations to ships on the high seas belonging to the following countries:—Brazil, Chili, Denmark, France, Greece, Italy, Norway, Portugal, Sweden, and Turkey. The previous regulations of 1879 apply to certain other countries, of which Germany, the Netherlands, and the United States are the most important.

(*k*) 36 & 37 Vict. c. 85.

17. If in any case of collision it is proved to the court before which the case is tried that any of the regulations for preventing collision contained in or made under (*l*) the Merchant Shipping Acts, 1854 to 1873, has been infringed,(*m*) the ship by which such regulation has been infringed shall be deemed to be in fault,(*n*) unless it is shown to the satisfaction of the court that the circumstances of the case made departure from the regulation necessary.(*o*)

The statutory provisions. Liability for infringement of regulations in cases of collision.

To render a vessel liable under this section it is not necessary to prove that the infringement of the regulation actually caused or contributed to the collision; it is enough to show that it might possibly have done so.(*p*)

§ 657. The following memoranda and diagrams will be found to be of assistance as illustrating the value of the Regulations in enabling the master of a vessel to determine the position and course of another ship by observing the bearing of its lights.

(*l*) The Mersey regulations fall within the operation of this section; *The Lady Downshire*, 4 P. D. 26. But the Thames rules do not; *The Harton*, 9 P. D. 44; *Cayzer, Irvine & Co.* v. *Carron Co.*, 9 Ap. Ca. 873; *The Monte Rosa*, (1893) P. at p. 30. Nor, as a general rule, do the navigation bye-laws of port authorities, unless the statutory regulations are expressly incorporated with them; *The Raithwaite Hall*, 30 L. T. 233.

(*m*) But a mere infringement, which by no possibility could have anything to do with the collision, will not render the ship liable; *The Magnet, The Duke of Sutherland, The Fanny M. Carvill*, L. R. 4 Ad. 417; *The Englishman*, 3 P. D. 18; *The Glamorganshire*, 13 Ap. Ca. 454.

(*n*) Not necessarily solely; *The Hibernia*, 31 L. T. 805.

(*o*) *The Tirzah*, 4 P. D. 33; *The Khedive*, 5 Ap. Ca. 876; *The Buckhurst*, 6 P. D. 152.

(*p*) *The Fanny M. Carvill*, L. R. 4 Ad. 417; 13 Ap. Ca. 455 (*n*); *The Hochung* and *The Lanwing*, 7 Ap. Ca. 512; *The Arklow*, 9 Ap. Ca. 136.

MEMORANDA AND DIAGRAMS

AGREED TO BY

THE ADMIRALTY, THE BOARD OF TRADE,

AND THE

TRINITY HOUSE.(a)

These Diagrams are in Two Parts. Part I. includes Diagrams 1 to 4 inclusive, and Part II. Diagrams 5 to 7 inclusive.

PART I.

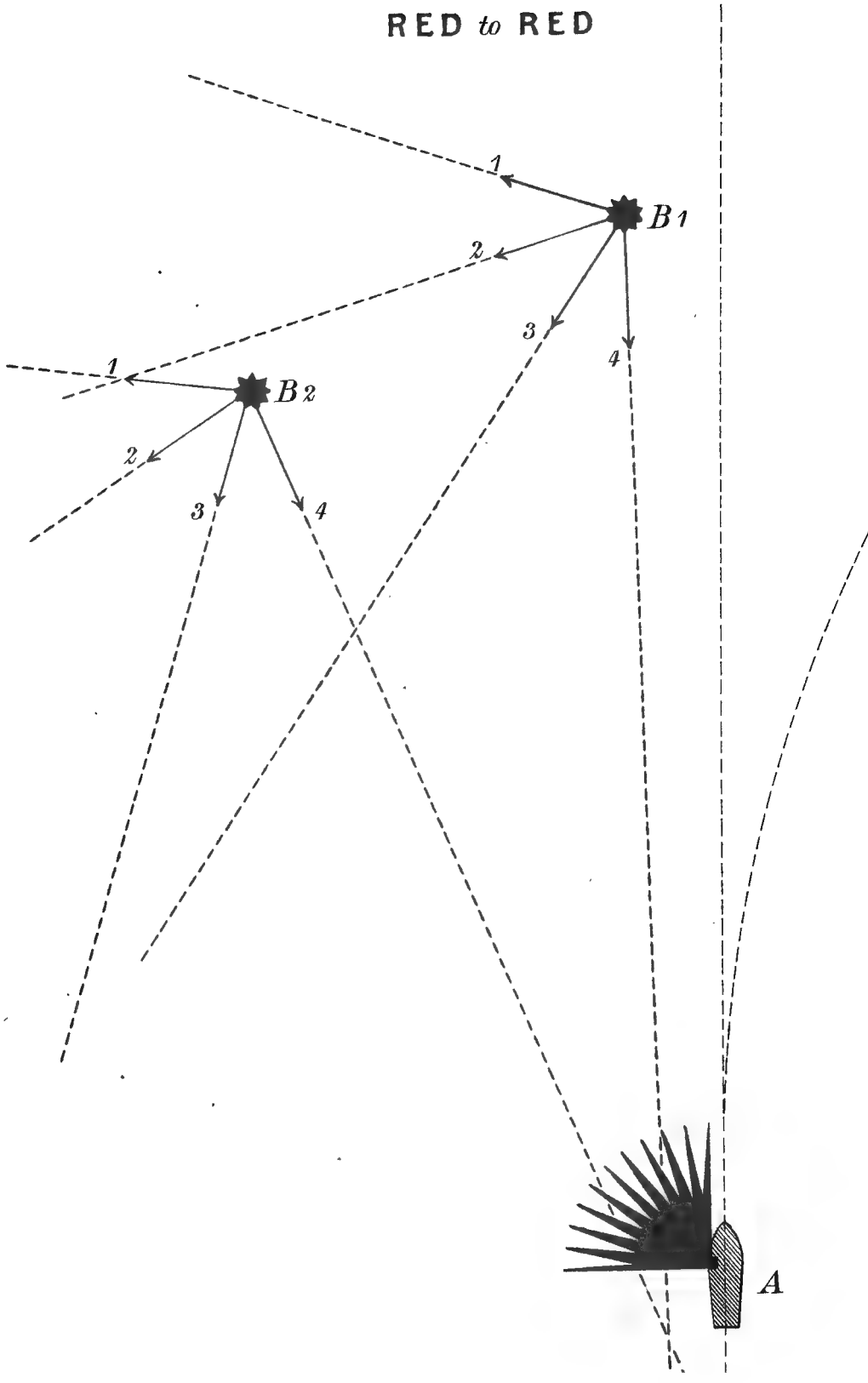
Being diagrams and explanations intended to show—

First.—That the existing rules do not apply to two ships each of which is passing the other; and

Secondly.—That no rule is necessary to prevent collisions between two ships each of which is passing the other.

(a) These diagrams and memoranda are taken from Mr. Thomas Gray's edition of The Regulations for Preventing Collisions at Sea, by his kind permission.

Diagram 1



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TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

RED TO RED.

DIAGRAM 1.

A, a steam ship, sees the RED and WHITE lights only of another steam ship nearly ahead on her own PORT side,—or somewhere on her own PORT side, as **B** 1 or **B** 2.

The ship carrying the RED light **B** 1 or **B** 2 must be passing **A** in the direction indicated by the RED arrows 1 or 4, or in some intermediate direction.

The ship **A** and the ship carrying the RED light **B** 1 or **B** 2 are not "*meeting* end on or nearly end on so as to involve risk of collision," nor are they "crossing so as to involve risk of collision."

They are *passing* clear of each other.

Therefore, as the rules only refer to cases in which "two ships are meeting end on, or nearly end on, so as to involve risk of collision," or in which "two ships are crossing so as to involve risk of collision," no rule applies to this case.

The only way in which **A** *can* get into collision with the vessel showing the RED light on her own Port side or ahead is by Starboarding to it, and there is therefore no necessity to make a rule to tell the master of **A** not to Starboard in such a case.

A is not required by the regulations to PORT her helm to the RED light **B** 1 or **B** 2 on her own Port side.

But **A** can PORT if necessary, as that will keep the two vessels **A** and **B** further apart.

TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

GREEN TO GREEN.

DIAGRAM 2.

A, a steam ship, sees the GREEN and WHITE lights only of another steam ship nearly ahead on her own STARBOARD side; —or somewhere on her own STARBOARD side as **B** 1 or **B** 2.

The ship carrying the GREEN light **B** 1 or **B** 2 must be going in the direction indicated by the GREEN arrows 1 or 4, or in some intermediate direction.

The ship **A** and the ship carrying the GREEN light **B** 1 or **B** 2 are not "*meeting* end on, or nearly end on, so as to involve risk of collision," nor are they "crossing so as to involve risk of collision."

They are *passing* clear of each other.

Therefore, as the rules only refer to cases in which "two ships are meeting end on, or nearly end on, so as to involve risk of collision," or in which "two ships are crossing so as to involve risk of collision," no rule applies to this case.

The only way in which **A** *can* get into collision with the vessel showing the GREEN light on her own starboard side, or ahead, is by porting to it, and there is, therefore, no necessity to make a rule to tell the master of **A** not to port in such a case.

A is not required by the regulations to PORT her helm to the GREEN light **B** 1 or **B** 2 seen on her own STARBOARD side.

But **A** can STARBOARD if necessary, as that will keep the two vessels **A** and **B** further apart.

Diagram 2

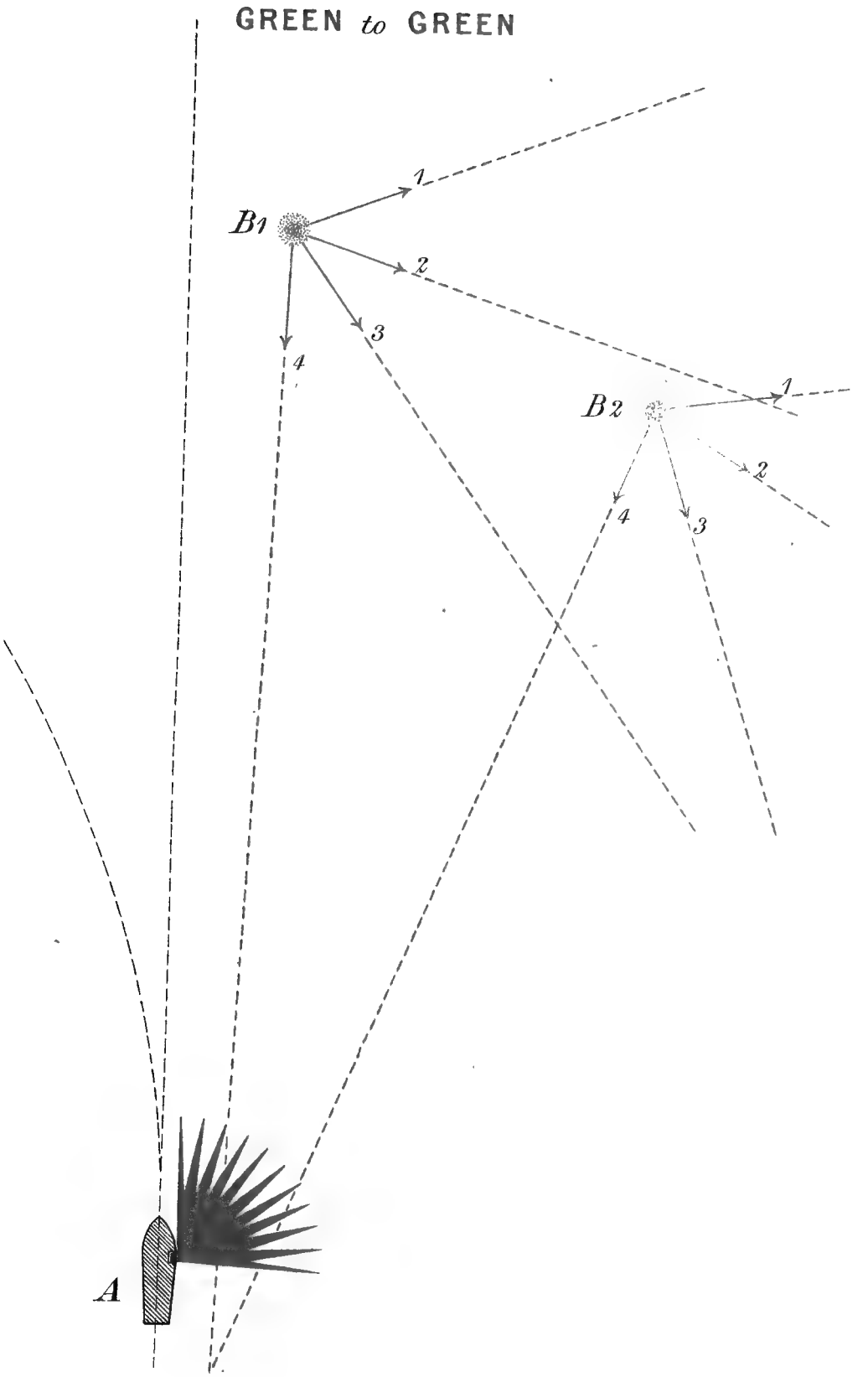

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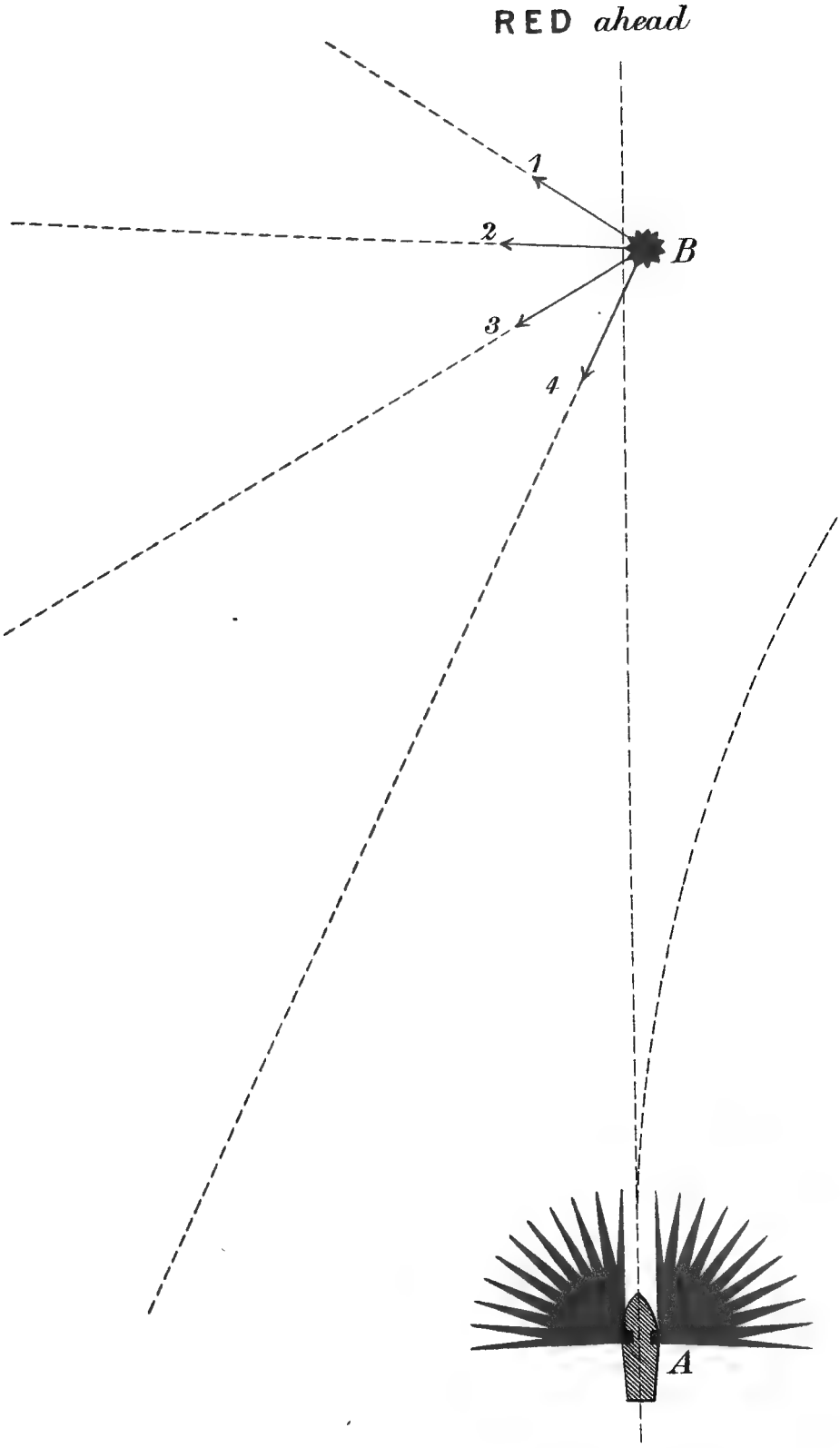
Diagram 3



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TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

RED AHEAD.

DIAGRAM 3.

A, a steam ship, sees the RED and WHITE lights only of another steam ship, **B**, ahead *end on or nearly end on to herself.*

The ship carrying the RED light **B** must be passing to the PORT of **A** in the direction indicated by the RED arrows 1 or 4, or in some intermediate direction.

The left hand or *port side* of the ship carrying the RED light **B** must, therefore, be end on or nearly end on with **A**, and for this reason **A** and **B** cannot be *meeting* at all.

The ship **A** and the ship carrying the RED light **B** are not "*meeting* end on or nearly end on, so as to involve risk of collision," nor are they "crossing so as to involve risk of collision."

Therefore, as the rules only refer to cases in which "two ships are meeting end on, or nearly end on, so as to involve risk of collision," or in which "two ships are crossing so as to involve risk of collision," no rule applies to this case.

The only way in which **A** *can* get into collision with the vessel showing the RED light ahead is by starboarding to it, and there is therefore no necessity to make a rule to tell the master of **A** not to starboard in such a case.

A is not required by the regulations to PORT her helm to a RED light ahead, nor is she required by the regulations to do anything else.

A can PORT if she chooses, as that will take her further from **B**.

TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

GREEN AHEAD.

DIAGRAM 4.

A, a steam ship, sees the GREEN and WHITE lights only of another steam ship **B**, ahead *end on or nearly end on to herself.*

The ship carrying the GREEN light **B** must be passing to the STARBOARD of **A**, in the direction indicated by the GREEN arrows 1 or 4, or in some intermediate direction.

The right hand or *starboard side* of the ship carrying the Green light **B** may, therefore, be "nearly end on" with **A**, but as the RED light of **B** is not seen, **A** and **B** cannot be meeting at all.

The ship **A** and the ship carrying the GREEN light **B** are not "meeting end on or nearly end on so as to involve risk of collision," nor are they "crossing so as to involve risk of collision."

Therefore, as the rules only refer to cases in which "two ships are meeting end on, or nearly end on, so as to involve risk of collision," or in which "two ships are crossing so as to involve risk of collision," no rule applies to this case.

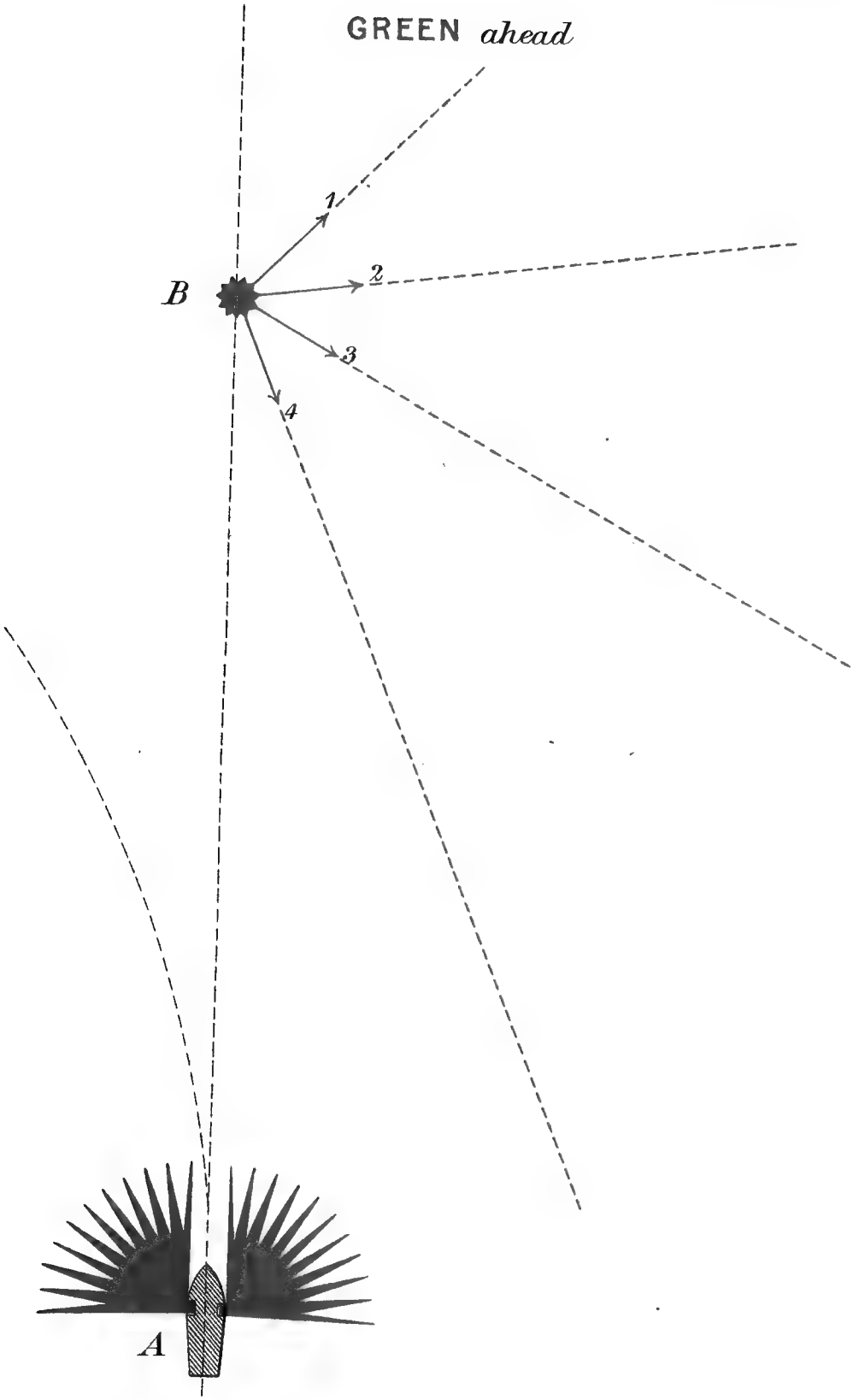
A is not required by the regulations to port her helm to a GREEN light ahead.

The only way in which **A** can get into collision with the vessel showing the GREEN light ahead is by porting to it, and there is, therefore, no necessity to make a rule to tell the master of **A** not to port in such a case.

A can STARBOARD if she chooses, as that will take her further from **B**.

If **A** ports to the GREEN light, she must inevitably run across the path of the vessel carrying the Green light.

Diagram 4



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Part II.

Being diagrams and explanations intended to show that the rules applicable to crossing ships and meeting ships are simple, sufficient, and intelligible.

TWO STEAM SHIPS CROSSING.

RED TO GREEN.

DIAGRAM 5.

A, a steam ship, sees the RED and WHITE lights only of another steam ship nearly ahead on her own STARBOARD side; or somewhere on her own STARBOARD side, as **B** 1 or **B** 2.

A is actually or may be probably *crossing* the path of the ship showing the RED light **B** 1 or **B** 2.

A knows that she herself is crossing the path of **B** 1 and is crossing the path of **B** 2 when the course of **B** 2 is in the direction indicated by the Red Arrows, 2, 3, and 4;—**A** must therefore assume that she is crossing the path of **B** 1 or **B** 2 in whatever direction they may be going.

She, **A**, must get out of the way of **B** 1 or **B** 2, because **B** 1 or **B** 2, a crossing ship, is on the starboard side of **A**, and because Article 16 of the regulations provides that "if two ships under "steam are crossing so as to involve risk of collision, the ship "which has the other on her own starboard side shall keep out of "the way of the other."

A must get out of the way by stopping, or going ahead, or starboarding, or porting, or going astern, as the circumstances of the case may require.

Above all things she must exercise caution and judgment, and she is bound to stop and reverse if there is the least possibility of collision.

Diagram 5

RED *to* GREEN

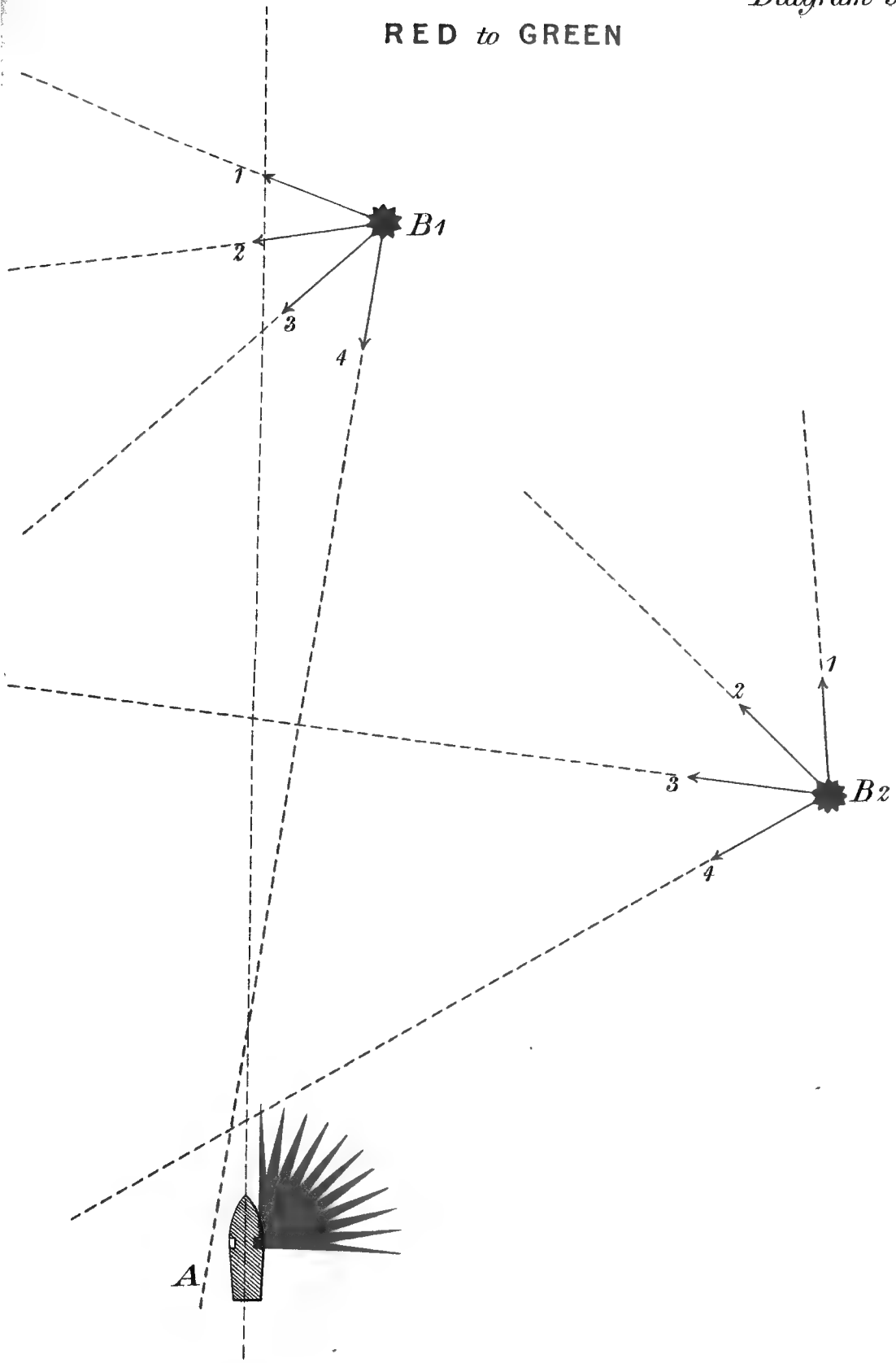

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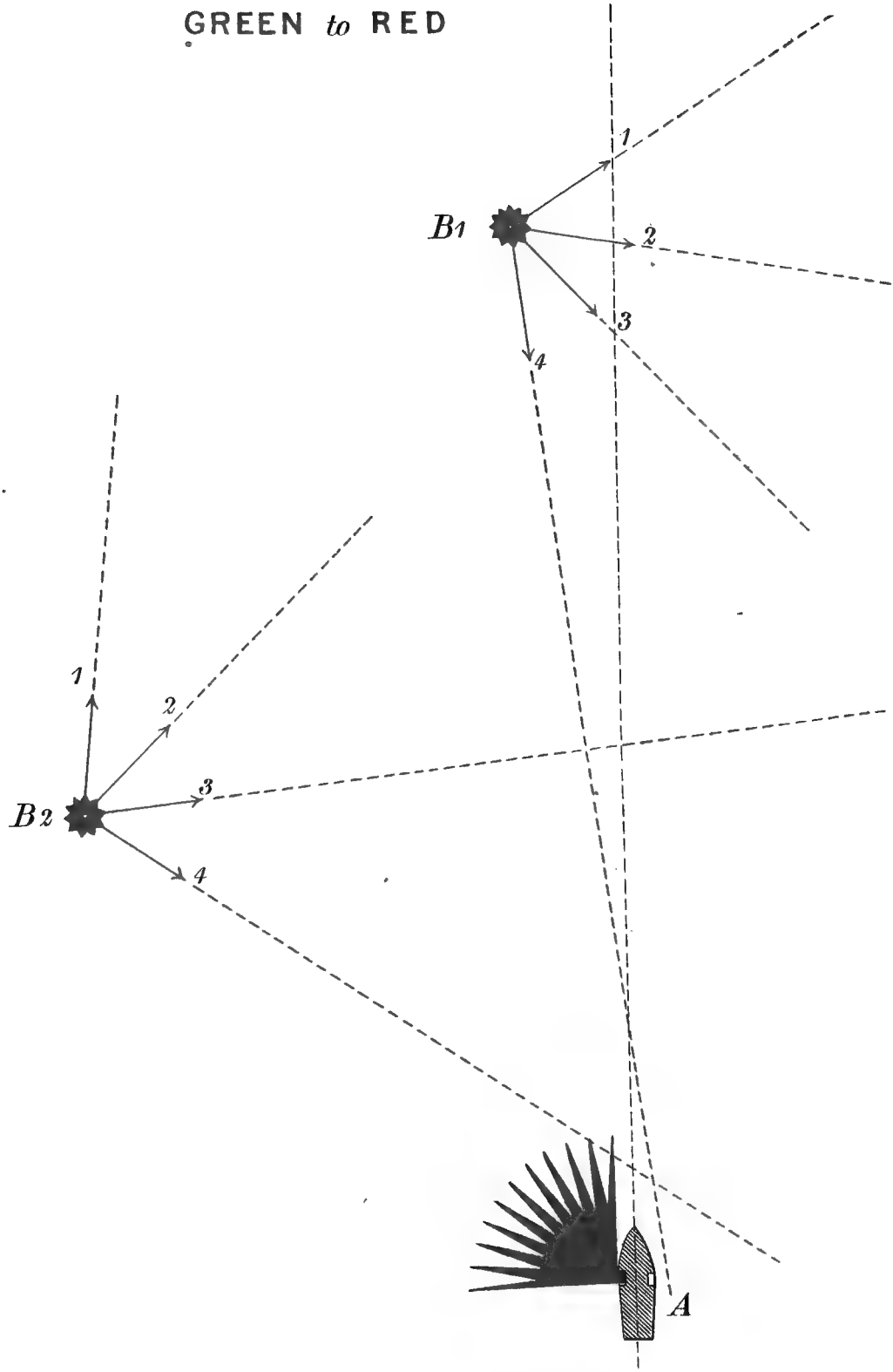
Diagram 6



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TWO STEAM SHIPS CROSSING.

GREEN TO RED.

DIAGRAM 6.

A, a steam ship, sees the GREEN and WHITE lights only of another steam ship nearly ahead on her own PORT side;—or somewhere on her own port side, **B** 1 or **B** 2.

The ship carrying the Green light **B** 1 or **B** 2 must be proceeding in the direction indicated by the arrows 1, 2, 3, or 4, or in some intermediate direction.

A, therefore, knows that the ship **B** 1 or **B** 2 showing the GREEN light on **A**'s PORT side is actually or may be probably *crossing* her (**A**'s) path.

A knows that she herself is to the STARBOARD side of the other crossing ship, **B** 1 or **B** 2; and that **B** 1 or **B** 2, the other crossing ship, must keep out of the way of **A**; because Article 16 of the regulations provides that "if two ships under steam are "crossing so as to involve risk of collision, the ship which has "the other on her own starboard side shall keep out of the way "of the other."

A is to stand-on and keep her course under Article 22 of the regulations;—unless any other course or proceeding is necessary to avoid immediate danger, in which case, under Article 23 of the regulations, a departure from her course becomes justifiable and proper. She must be ready to stop and reverse in good time if there is any appearance of a collision.

TWO STEAM SHIPS MEETING end on, or nearly end on.

THREE LIGHTS AHEAD.

DIAGRAM 7.

A, a steam ship, sees all three lights of another steam ship ahead, as **B**.

A therefore knows that she and the steamer **B** are meeting end on, or nearly end on.

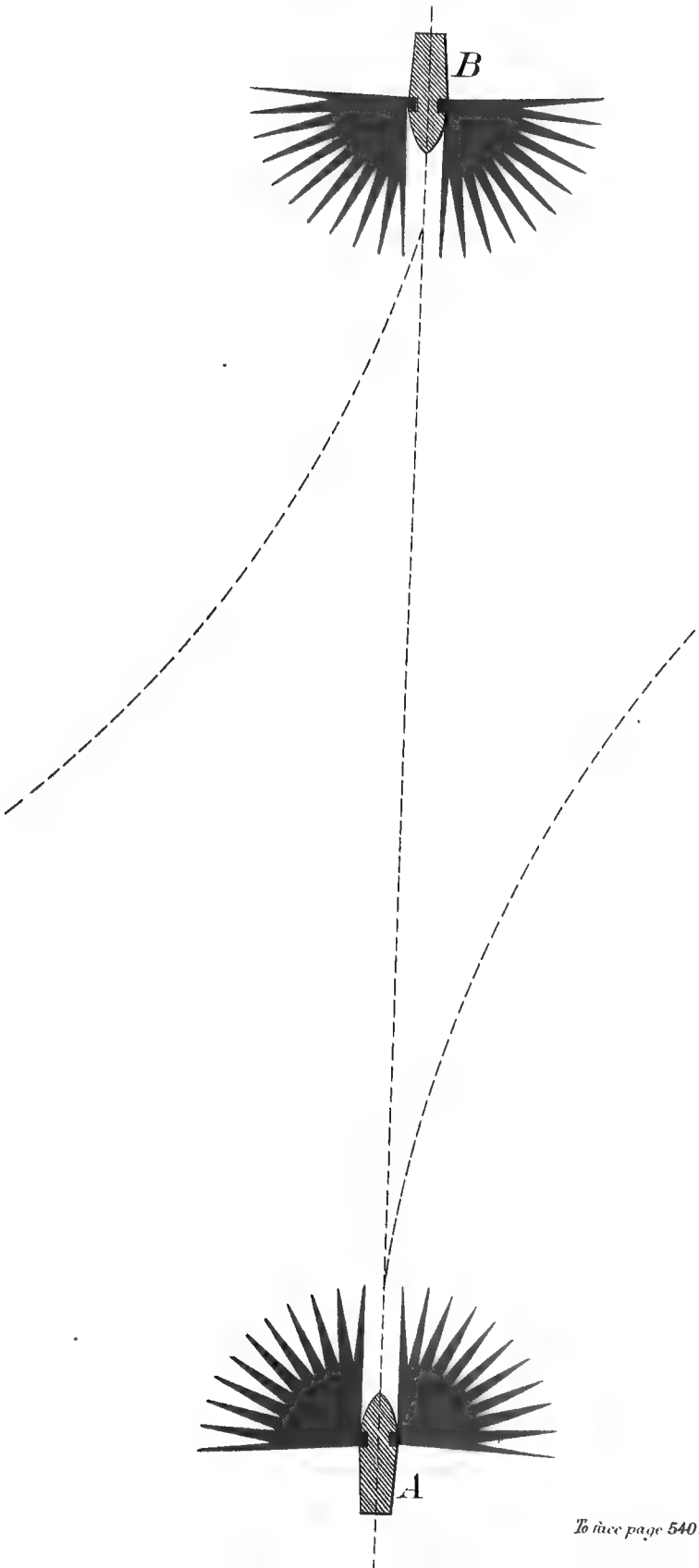
A PORTS and keeps her Red and White lights only showing to **B**.

B PORTS and keeps her Red and White lights only showing to **A**.

A and **B** port because Article 15 of the regulations provides that "if two ships under steam are meeting end on, or nearly "end on, so as to involve risk of collision, each shall alter her "course to starboard, so that each may pass on the port side of "the other."

Diagram 7

Three lights ahead



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REGULATIONS

FOR

PREVENTING COLLISIONS AT SEA.(a)

ART. 1.

§ 658. *In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.*(b) Art. 1.

Where a vessel is being towed by a steam tug, the vessel and the tug are to be treated, for the purposes of these regulations, as one steam ship, for the conduct of which the vessel towed is responsible.(c)

ART. 2.

Rules concerning Lights.

§ 659. *The lights mentioned in the following articles, numbered* 3, 4, 5, 6, 7, 8, 9, 10, *and* 11, *and no others, shall be carried in all weathers, from sunset to sunrise.*(d) Art. 2. Lights.

(a) Mr. Gray, in his very able edition of the Regulations for Preventing Collisions at Sea, gives the following aids to memory in four verses:

1. *Two Steamships meeting.*

When both side Lights you see ahead—
Port your helm, and show your RED.

2. *Two Steamships passing.*

GREEN to GREEN—or, RED to RED—
Perfect safety—Go ahead!

3. *Two Steamships crossing.*

NOTE.—This is the position of greatest danger; there is nothing for it but good look-out, caution, and judgment.

If to your starboard RED appear,
It is your duty to keep clear;
To act as judgment says is proper:—
To Port—or Starboard—Back—or, Stop her!
But when upon your Port is seen
A Steamer's Starboard light of GREEN,
There's not so much for you to do,
For GREEN to Port keeps clear of you.

4. *All Ships must keep a good look-out, and Steam Ships must stop and go astern if necessary.*

Both in safety and in doubt
Always keep a good look-out;
In danger, with no room to turn,
Ease her!—Stop her!—Go astern!

(b) *The Jennie S. Barker*, L. R. 4 Ad. 456.

(c) *The Cleadon*, Lush. 158; nom. *Stevens* v. *Gourley*, 14 Moo. P. C. 92; but see *The American* and *The Syria*, L. R. 6 P. C. 127.

(d) Various local rules as to lights are in operation on the Thames, Mersey, and other rivers. See Marsden's Collisions at Sea, App.

Art. 2.

This does not mean that no other lights shall be shown on any occasion, but that no other lights shall be carried as fixed lights. Under some circumstances a flare-up light may be shown to give warning in case of danger.(*e*)

The use of an improper light cannot be excused on the ground that it was exhibited by order of a pilot compulsorily employed.(*f*)

Art. 3.

Art. 3.
Lights for steam ships.

§ 660. *A seagoing steam ship when under way shall carry:*

(a) *On or in front of the Foremast at a height above the hull of not less than* 20 *feet, and if the breadth of the ship exceeds* 20 *feet, then at a height above the hull not less than such breadth, a bright white light, so constructed as to show an uniform and unbroken light over an arc of the horizon of* 20 *points of the compass; so fixed as to throw the light* 10 *points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.*

(b) *On the Starboard Side, a green light, so constructed as to show an uniform and unbroken light over an arc of the horizon of* 10 *points of the compass;*(*g*) *so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.*

(c) *On the Port Side, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of* 10 *points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.*

(d) *The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.*(*h*)

(e) *To ensure that the red and green side lights shall show an uniform light from right ahead of the ship to two points abaft the beam on the port and starboard sides respectively, and shall not show across the bow of the ship itself, the said lights must be fixed and the screens fitted so that the rays from the red and green lights shall*

(*e*) *The Merchant Prince*, 10 P. D. 139.

(*f*) *The Ripon*, 10 P. D. 65.

(*g*) In *The Fire Queen*, 12 P. D. 147, it was held that an obscuration of the starboard light, to the extent of 2½ or 3 degrees, was not an infringement of this regulation; but see *The Tirzah*, 4 P. D. 33.

(*h*) The side-lights may be carried in the rigging; *The Glamorganshire* 13 Ap. Ca. 454.

cross the line of the ship's keel projected ahead of the ship at a reasonable distance ahead of the ship. Art. 3.

With regard to all vessels whose lights are inspected by the officers of the Board of Trade, the red or green side-light will not be deemed to be fixed and fitted in accordance with the Regulations, unless it is so fixed and screened that a line drawn from the outside edge of the wick to the foremost end of the inboard screen of such light shall make an angle of four degrees, or as near thereto as may be practicable, with a line drawn parallel with the keel of the ship from the outside edge of the wick.(*i*)

A vessel with her anchor down, but not actually holden by and under the control of it, is "*under way*" within the meaning of this regulation, and is bound to exhibit coloured lights.(*k*)

Art. 4.

Art. 4. Lights for steam ships towing other ships.

§ 661. *A steam ship, when towing another ship, shall, in addition to her side-lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart, so as to distinguish her from other steam ships. Each of these lights shall be of the same construction and character, and shall be carried in the same position, as the white light which other steam ships are required to carry.*(*l*)

Art. 5.

Art. 5. Signals for ships not under command, and telegraph ships.

§ 662. (a) *A ship, whether a steam ship or a sailing ship, which from any accident is not under command, shall at night carry, in the same position as the white light which steam ships are required to carry, and, if a steam ship, in place of that light, three red lights in globular lanterns, each not less than* 10 *inches in diameter, in a vertical line one over the other, not less than three feet apart, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than three feet apart, in front of but not lower than her foremast head, three black balls or shapes, each two feet in diameter.*

(b) *A ship, whether a steam ship or a sailing ship, employed in laying or in picking up a telegraph cable, shall at night carry in the same position as the white light which steam ships are required to carry, and, if a steam ship, in place of that light, three lights in globular lanterns, each not less than* 10 *inches in diameter, in a vertical line over one another, not less than six feet apart; the highest*

(*i*) This sub-section was added by Order in Council of Jan. 30, 1893, with a view to minimising the difficulties due to the existence of the dark lane between the bows of the vessel and the point of intersection of her side-lights.

(*k*) *The Esk*, L. R. 2 Ad. 350.

(*l*) See Art. 3, *ante* § 660.

Art. 5.

and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character that the red lights shall be visible at the same distance as the white light. By day she shall carry in a vertical line one over the other, not less than six feet apart, in front of but not lower than her foremast head, three shapes not less than two feet in diameter, of which the top and bottom shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(c) *The ships referred to in this Article, when not making any way through the water, shall not carry the side-lights, but when making way shall carry them.*

(d) *The lights and shapes required to be shown by this Article are to be taken by other ships as signals that the ship showing them is not under command, and cannot therefore get out of the way. The signals to be made by ships in distress and requiring assistance are contained in Article* 27.

The words "not under command" mean that the course of the vessel cannot be so properly controlled or directed as to enable her to get out of the way of any peril which she may have to encounter.(*m*) It will be observed that "making way through the water" means something more than the "under way" of Articles 3 and 6.

ART. 6.

Art. 6. Lights for sailing ships.

§ 663. *A sailing ship* (*mm*) *under way,*(*n*) *or being towed, shall carry the same lights as are provided by Article* 3 *for a steam ship under way, with the exception of the white light, which she shall never carry.*

ART. 7.

Art. 7. Special lights for small vessels.

§ 664. *Whenever, as in the case of small vessels during bad weather, the green and red side-lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for use, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.*

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

(*m*) *The P. Caland*, (1891) P. 313; (1892) P. 191; (1893) A. C. 207.

(*mm*) A Thames lighter, ordinarily employed in the river, and not a sea-going vessel, is not within this rule; *The C. S. Butler*, L. R. 4 Ad. 238.

(*n*) A ship hove to is "under way" within the meaning of this article; *The Pennsylvania*, 23 L. T. 55; and see Art. 3, *ante* § 660.

Art. 8.

§ 665. *A ship, whether a steam ship or a sailing ship, when at anchor, shall carry where it can best be seen, but at a height not exceeding* 20 *feet above the hull, a white light, in a globular lantern of not less than eight inches in diameter, and so constructed as to show a clear uniform and unbroken light, visible all round the horizon at a distance of at least one mile.* Art. 8. Riding lights.

It being the duty of a ship at anchor to carry a riding light always visible, no such excuse as that of taking the light down to be trimmed will be admitted, if the absence of the light conduces to a collision.(*o*)

Art. 9.

§ 666. *A pilot vessel, when engaged on her station on pilotage duty, shall not carry the lights required for other vessels, but shall carry a white light at the mast head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.* Art. 9. Lights for pilot vessels.

A pilot vessel, when not engaged on her station on pilotage duty, shall carry lights similar to those of other ships.(*p*)

This article has been modified as regards steam pilot vessels by an Order in Council of 18th August, 1892, which provides as follows:

A steam pilot vessel, exclusively employed for the service of pilots licensed or certified by any pilotage authority or the committee of any pilotage district in the United Kingdom, when engaged on her station on pilotage duty, and in British waters, and not at anchor, shall, in addition to the lights required for all pilot boats, carry at a distance of eight feet below her white mast head light a red light, visible all round the horizon, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the coloured side-lights required to be carried by vessels when under way. Steam pilot vessels.

When engaged on her station on pilotage duty, and in British waters, and at anchor, she shall carry, in addition to the light required for all pilot boats, the red light above mentioned, but not the coloured side-lights.

When not engaged on her station on pilotage duty, she shall carry the same lights as other steam vessels.

This addition to Art. 9, rendered necessary by the introduction of steam pilot vessels, draws a distinction, not to be found in the

(*o*) *The C. M. Palmer*, 29 L. T. 120. (*p*) *The Mary Hounsell*, 4 P. D. 204.

Art. 9.

original regulation, between pilot boats engaged on their station on pilotage duty under way, and those similarly engaged at anchor. It will also be observed that the provisions contained in the new matter are limited in their operation to vessels in British waters exclusively employed for the service of licensed(*q*) pilots.

Art. 10.

Art. 10.
Lights for fishing vessels and boats.

§ 667. *Open boats and fishing vessels of less than* 20 *tons net registered tonnage, when under way and when not having their nets, trawls, dredges, or lines in the water, shall not be obliged to carry the coloured side-lights; but every such boat and vessel shall in lieu thereof have ready at hand a lantern with a green glass on the one side and a red glass on the other side, and on approaching to or being approached by another vessel such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.*

The following portion of this Article applies only to fishing vessels and boats when in the sea off the coast of Europe lying north of Cape Finisterre.

(a) *All fishing vessels and fishing boats of* 20 *tons net registered tonnage, or upwards, when under way and when not required by the following regulations in this Article to carry and show the lights therein named, shall carry and show the same lights as other vessels under way.*

(b) *All vessels when engaged in fishing with drift nets shall exhibit two white lights from any part of the vessel where they can be best seen. Such lights shall be placed so that the vertical distance between them shall be not less than* 6 *feet and not more than* 10 *feet; and so that the horizontal distance between them measured in a line with the keel of the vessel shall be not less than* 5 *feet and not more than* 10 *feet. The lower of these two lights shall be the more forward, and both of them shall be of such a character and contained in lanterns of such construction as to show all round the horizon, on a dark night with a clear atmosphere, for a distance of not less than three miles.*

(c) *A vessel employed in line fishing with her lines out shall carry the same lights as a vessel when engaged in fishing with drift nets.*

(d) *If a vessel when fishing becomes stationary in consequence*

(*q*) The original portion of the article would probably be held to apply also in the case of unlicensed pilots. See *The Mary Hounsell*, 4 P. D. 204.

of her gear getting fast to a rock or other obstruction, she shall show the light and make the fog signal for a vessel at anchor.(r)

Art. 10. Lights for fishing vessels and boats.

(e) *Fishing vessels and open boats may at any time use a flare-up in addition to the lights which they are by this Article required to carry and show. All flare-up lights exhibited by a vessel when trawling, dredging, or fishing with any kind of drag net shall be shown at the after part of the vessel, excepting that, if the vessel is hanging by the stern to her trawl, dredge, or drag net, they shall be exhibited from the bow.*

(f) *Every fishing vessel and every open boat when at anchor between sunset and sunrise shall exhibit a white light visible all round the horizon at a distance of at least one mile.*

(g) *In fog, mist, or falling snow, a drift net vessel attached to her nets, and a vessel when trawling, dredging, or fishing with any kind of drag net, and a vessel employed in line fishing with their lines out, shall at intervals of not more than two minutes make a blast with her fog horn and ring her bell alternately.*

This article has been modified as regards British fishing vessels and boats when in the sea off the coast of Europe lying north of Cape Finisterre. An order in Council of the 30th December, 1884, provides as follows:

Special provisions as to trawlers.

As regards steam vessels engaged in trawling, when under steam, such vessels, if of 20 tons gross register tonnage or upwards, and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, shall between sunset and sunrise either carry and show the lights required by the said recited Article 3 of the Regulations aforesaid, or shall carry and show in lieu thereof and in substitution therefor, but not in addition thereto, other lights of the description set forth in Part I. of the Schedule hereto:

As regards sailing vessels engaged in trawling, such vessels, if of 20 tons net register tonnage or upwards, and having their trawls in the water, and not being stationary in consequence of their gear getting fast to a rock or other obstruction, shall between sunset and sunrise either carry and show the lights required by the said recited Article 6 of the Regulations aforesaid, or shall carry and show in lieu thereof and in substitution

(r) *The Warwick*, 15 P. D. 189.

Art. 10.

therefor, but not in addition thereto, other lights of the description set forth in Part II. of the Schedule hereto.

Special lights for trawlers.

The red and green lights, which are by this Order permitted as aforesaid to be carried in lieu of the lights required by Articles 3 and 6 of the said recited Regulations respectively, shall be of such a character as to be visible at a distance of not less than two miles on a dark night, with a clear atmosphere.

And Her Majesty is pleased further to direct that steam vessels of 20 tons gross register tonnage or upwards, and sailing vessels of 20 tons net register tonnage or upwards, engaged in trawling, when under way between sunset and sunrise, but not having their trawls in the water, shall, if steam ships, carry and show the lights required by Article 3 above recited, and if sailing ships, shall carry and show the lights required by Article 6 above recited: Provided, however, that the modifications and additions set forth in Parts I., II., of the Schedule hereto shall not be applicable to the fishing vessels and boats of any foreign country, unless and until the same shall have been made applicable thereto by Order in Council.

SCHEDULE.

Part I.—Steam Vessels.

(1) *On or in front of the foremast head and in the same position as the white light which other steam ships are required to carry, a lanthorn, showing a white light ahead, a green light on the starboard side, and a red light on the port side; such lanthorn shall be so constructed, fitted, and arranged as to show an uniform and unbroken white light over an arc of the horizon of four points of the compass, an uniform and unbroken green light over an arc of the horizon of 10 points of the compass, and an uniform and an unbroken red light over an arc of the horizon of 10 points of the compass, and it shall be so fixed as to show the white light from right ahead to two points on the bow on each side of the ship, the green light from two points on the starboard bow to four points abaft the beam on the starboard side, and the red light from two points on the port bow to four points abaft the beam on the port side: and* (2) *a white light in a globular lanthorn of not less than eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light all round the horizon; the lanthorn containing such white light shall be carried lower than the lanthorn showing the green, white, and red lights as aforesaid, so, however, that the vertical distance between them shall not be less than 6 feet nor more than 12 feet.*

PART II.—SAILING VESSELS.

(1) *On or in front of the foremast head a lanthorn having a green glass on the starboard side and a red glass on the port side, so constructed, fitted, and arranged that the red and green do not converge, and so as to show an uniform and unbroken green light over an arc of the horizon of* 12 *points of the compass, and an uniform and unbroken red light over an arc of the horizon of* 12 *points of the compass, and it shall be so fixed as to show the green light from right ahead to four points abaft the beam on the starboard side, and the red light from right ahead to four points abaft the beam on the port side: and* (2) *a white light in a globular lanthorn of not less than eight inches in diameter, and so constructed as to show a clear uniform and unbroken light all round the horizon; the lanthorn containing such white light shall be carried lower than the lanthorn showing the green and red lights as aforesaid, so, however, that the vertical distance between them shall not be less than* 6 *feet and not more than* 12 *feet.*

Art. 10. Special lights for trawlers.

Part II. of this Schedule was further modified by another Order in Council of the 24th June, 1885, applying to British sailing vessels engaged in trawling north of Cape Finisterre. Such vessels, when having their trawls in the water and not being stationary, are permitted, in lieu of the lights required by Art. 6 or Part II. of the Schedule to the Order of 30th December, 1884, to carry and show:

A white light in a globular lanthorn of not less than eight inches in diameter, and so constructed as to show a clear uniform and unbroken light all round the horizon, and visible on a dark night, with a clear atmosphere, for a distance of at least 2 *miles; and also a sufficient supply of red pyrotechnic lights which shall each burn for at least* 30 *seconds, and shall, when so burning, be visible for the same distance under the same conditions as the white light. The white light shall be shown from sunset to sunrise, and one of the red pyrotechnic lights shall be shown on approaching, or on being approached by another ship or vessel in sufficient time to prevent collision.*(s)

The present state of the law with regard to the lights to be carried by fishing vessels leaves much to be desired. Article 10 applies only in certain waters, and its subsequent modifications to British vessels only.(t)

It has been held that a steam trawler with sufficient way on

(s) The duty to show the pyrotechnic lights applies only where there is risk of collision; *The Orion*, (1891) P. 307.

(t) See on this point Marsden's Collisions at Sea, pp. 385 *et seq.*

Art. 10.

her to act with effect in altering her course for an approaching ship, should carry the ordinary regulation lights prescribed by Art. 3, but if she has no more than just steerage way, and therefore little power of keeping out of the way of another vessel, she should carry the lights prescribed in Part I. of the Schedule to the Order of 1884.(*u*)

Art. 11.

Art. 11. Light for overtaken ship.

§ 668. *A ship which is being overtaken by another shall show from her stern to such last-mentioned ship a white light or a flare-up light.*

The obligation to show this light does not arise till the vessel, which is being overtaken, has had an opportunity of seeing that the other is approaching on such a course that she cannot see the lights of the overtaken ship. The specified warning must then be given within a reasonable time, to afford an opportunity to the other vessel to keep out of the way, and so avoid risk of collision.(*x*)

A vessel is not an overtaking vessel within the meaning of this article, unless she is more than two points abaft the beam of the foremost ship, that is, unless she is in a position from which she is unable to see the coloured lights of the other.(*y*)

The light prescribed by this article must be shown from time to time,(*z*) but not permanently fixed so as to show when no overtaking vessel is in sight,(*a*) nor so placed as to be visible over part of the area of a side-light.(*b*)

In the absence of affirmative evidence of its efficiency, a binnacle lamp is not such a light as is contemplated by this section.(*c*)

Art. 12.

Sound Signals for Fog, &c.

Art. 12. Sound signals for fog, &c.

§ 669. *A steam ship shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog horn to be sounded by a bellows or other mechanical means,(d) and also with an efficient bell.(e) A sailing ship shall be provided with a similar fog horn and bell.*

(*u*) *The Tweedsdale*, 14 P. D. 164; and see *The Dunelm*, 9 P. D. 164.

(*x*) *The Main*, 11 P. D. 132.

(*y*) *The Franconia*, 2 P. D. 8; *The Main*, 11 P. D. 132; *The Imbro*, 14 P. D. 73.

(*z*) *The Essequibo*, 13 P. D. 51.

(*a*) *The Imbro*, 14 P. D. 73; but see *The Stakesby*, 15 P. D. 166.

(*b*) *The Palinurus*, 13 P. D. 14.

(*c*) *The Breadalbane*, 7 P. D. 186; *The Patroclus*, 13 P. D. 54.

(*d*) *The Love Bird*, 6 P. D. 80.

(*e*) In all cases where the regulations require a bell to be used a drum will be substituted on board Turkish vessels.

In fog, mist, or falling snow, whether by day or night, the signals described in this Article shall be used as follows; that is to say,— Art. 12.

(a) *A steam ship under way (f) shall make with her steam whistle, or other steam sound signal, at intervals of not more than two minutes, a prolonged blast.*

(b) *A sailing ship under way shall make with her fog horn, at intervals of not more than two minutes, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.*

(c) *A steam ship and a sailing ship, when not under way, shall at intervals of not more than two minutes ring the bell.*

By the Washington regulations a "prolonged blast" means a blast from four to six seconds' duration.(g) It is the duty of a vessel when approaching a fog bank to make the fog signals, though she herself be not in a fog.(h) The neglect to do this does not, however, constitute a breach of the regulations.(i) A sailing vessel tacking in a fog must not change the signal until she gets the wind on the other side.(k)

Art. 13.

Speed of Ships to be moderate in Fog, &c.

§ 670. *Every ship, whether a sailing ship or steam ship, shall, in a fog, mist, or falling snow, go at a moderate speed.* Art. 13. Speed in fog to be moderate.

What is "moderate speed" depends not on the maximum speed which the vessel can make, but on the circumstances of each particular case, such as the handiness of the vessel, and her position, whether in a crowded channel or on the open seas.(l) "In the Thames, for example, before a whistle is heard, I think that a vessel in a dense fog should be brought as nearly as possible to a standstill, so as only to be just under command. But on the open sea, where the probabilities of actually meeting another ship are less, I do not think that the speed need be as moderate as if a vessel is navigating a narrow channel. . . . . If a ship at sea, in a dense fog, hears a whistle which should indicate that the other vessel may be from a mile to a mile and a half away, she ought at once to reduce her speed to a moderate rate. . . . . As

(f) As to the meaning of "under way," see *ante* § 660.

(g) As to a "short blast," see Art 19, *post* § 676.

(h) *The Milanese*, 43 L. T. 107; on app. 45 L. T. 151.

(i) *The N. Strong*, (1892) P. 105.

(k) *The Constantia*, 62 L. T. 236.

(l) *The Elysia*, 46 L. T. 840.

Art. 13.

the ship comes nearer and nearer, moderate speed becomes more moderate and more moderate. That which was moderate speed when the vessels were two or three miles apart, is not a moderate speed when the vessels are within half a mile of each other, and as the vessels get nearer he must bring his own to as complete a standstill as possible without putting her out of command, and if it is a steamer she must go at least dead slow."(*m*)

Nor is there any general rule that a vessel when approaching another in a fog is not entitled to act with her helm until the signals of the other clearly indicate her direction, but each case must depend upon the special circumstances.(*n*)

Considerations of public convenience,(*o*) and the fact of the vessel being under contract to carry the mails at a specified rate of speed,(*p*) have been held to afford no defence to a charge of infringing this regulation. And a ferry steamer crossing a river in a dense fog takes upon herself all the responsibility incident to such a course,(*o*) because in a dense fog it is the duty of a steamer to anchor as soon as circumstances will permit.(*q*)

Art. 14.

Steering and Sailing Rules.

Art. 14.
Two sailing ships.

§ 671. *When two sailing ships are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows, viz.:*

(a) *A ship which is running free shall keep out of the way of a ship which is close-hauled.*

(b) *A ship which is close-hauled on the port tack shall keep out of the way of a ship which is close-hauled on the starboard tack.*

(c) *When both are running free with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other.*

(d) *When both are running free with the wind on the same side, the ship which is to windward shall keep out of the way of the ship which is to leeward.*

(e) *A ship which has the wind aft shall keep out of the way of the other ship.*

In this article, as well as in Arts. 15, 16, 17, and 18, the

(*m*) Per Brett, M.R., in *The Dordogne*, 10 P. D. 6. For examples of cases in which vessels have been held to blame for infringing this regulation, see *The Pennsylvania*, 23 L. T. 55; *The Magna Charta*, 25 L. T. 512; *The City of Brooklyn*, 1 P. D. 276; *The Kirby Hall*, 8 P. D. 71; *The Zadok*, 9 P. D. 114; *The Beta*, 9 P. D. 134; *The Ebor*, 11 P. D. 25; *The Rosetta*, 59 L. T. 342; *The Resolution*, 60 L. T. 430; *The Lancashire*, (1893) P. 47. See also cases under Art. 18, *post* § 675,

(*n*) *The Vindomora*, 14 P. D. 172; (1891) A. C. 1; *The Resolution*, 60 L. T. 430.

(*o*) *The Lancashire*, L. R. 4 Ad. 198.

(*p*) *The Vivid*, Sw. 88.

(*q*) *The Otter*, L. R. 4 Ad. 203.

words, "so as to involve risk of collision," refer to a time before risk of collision has actually arisen, and when not only the collision, but the risk itself can be avoided. The moment of time beyond which action cannot be deferred if the regulation is to be complied with is the moment before risk of collision is constituted.(r) Art. 14.

The phrase "close-hauled" has been judicially interpreted to mean sailing about a point off being close jammed to the wind.(s) In other words, a ship is close-hauled when she is within a point of sailing as near to the wind as she can. Running free is apparently used as the antithesis of close-hauled, and it seems also to include the case of a ship with the wind aft.(t) Close-hauled. Running free.

A ship hove to on the port tack is bound to keep out of the way of a crossing ship close-hauled on the starboard tack,(u) but it is otherwise if the latter have the wind free.(x) If a vessel on the port tack has thrown herself into stays and become helpless, she must nevertheless do what she can in order to keep out of the way of a vessel on the starboard tack.(y) And the latter, if apprised of the helpless condition of the former, will be under a corresponding duty to execute any practicable manœuvre that may tend to avoid a collision.(y) Ship hove to. Ship in stays.

The rules contained in this article are subject to the modifications imposed by Art. 20,(z) requiring a ship overtaking another to keep out of her way, and Art. 22,(a) providing that where by the rules one ship is to keep out of the way, the other shall keep her course.

Art 15.

§ 672. *If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision,(b) each shall alter her course to starboard, so that each may pass on the port side of the other.* Art. 15. Two ships under steam meeting.

This Article applies only to cases where ships are meeting end on, or nearly end on, *in such a manner as to involve risk of collision*, and does not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two ships is end on, or nearly end on, to the other; in

(r) *The Beryl*, 9 P. D. 137.
(s) *The Earl Wemyss*, 61 L. T. 289; *The Singapore*, L. R. 1 P. C. 378; *The Breadalbane*, 7 P. D. 186.
(t) *The Privateer*, 7 L. R. Ir., 105.
(u) *The Rosalie*, 5 P. D. 245.
(x) *The Eleanor* and *The Alma*, 2 M. L. C. 240.
(y) *Wilson* v. *Canada Shipping Co.*, 2 App. Ca. 389.
(z) *Post* § 677.
(a) *Post* § 679.
(b) As to the meaning of "so as to involve risk of collision," see *ante* § 671.

Art. 15.

other words, to cases in which, *by day*, each ship sees the masts of the other in a line, or nearly in a line, with her own; and *by night*, to cases in which each ship is in such a position as to see both the side-lights of the other.

It does not apply, *by day*, to cases in which a ship sees another *ahead* crossing her own course; or *by night*, to cases where the red light of one ship is opposed to the red light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light, is seen ahead; or where both green and red lights are seen anywhere but ahead.

Art 16.

Art. 16.
Two ships under steam crossing.

§ 673. *If two ships under steam are crossing so as to involve risk of collision,*(c) *the ship which has the other on her own starboard side shall keep out of the way of the other.*(d)

A ship required to keep out of the way of another may do so by porting or starboarding, by going ahead or astern, or by any other manœuvre that she thinks fit, according to the circumstances.(e)

Overtaking ship.

When a vessel is at the same time overtaking and crossing the course of another, she is deemed an overtaking,(f) and not a crossing ship, and is bound therefore to keep out of the way of the other vessel under Art. 20.(g)

The fact of a vessel being about to go into dock does not constitute a special circumstance under Art. 23,(h) so as to relieve her from the obligation of obeying Art. 16.(i) And the law is the same with regard to a vessel approaching a pilot station in order to take up a pilot.(k)

Narrow channels.

The rule as to crossing ships laid down in this article, applies to narrow channels within Art. 21,(l) where there are no special or local rules to supersede the general rules of navigation.(m)

Winding rivers.

In winding and crowded rivers, where no special rules are in force, the particular direction taken for a few moments in rounding a corner, or avoiding an obstacle, is not such an indication of the real course of the ship as will justify another ship in assuming that the two are crossing, within the meaning of Art. 16.(n)

(c) As to the meaning of "so as to involve risk of collision," see *ante* § 671.

(d) As to the correlative duty of the other ship to keep her course, see Art. 22, *post* § 679.

(e) *The Nor*, 30 L. T. 576; *The Bougainville*, L. R. 5 P. C. 316.

(f) As to what is an overtaking ship within Art. 11, see *ante* § 668. But see also *The Molière*, (1893) P. 217.

(g) *The Seaton*, 9 P. D. 1; *The Molière*, (1893) P. 217.

(h) *Post* § 680.

(i) *The St. Audries*, 54 L. T. 278.

(k) *The Ada*, 28 L. T. 825.

(l) *Post* § 678.

(m) *The Leverington*, 11 P. D. 117. As to the Thames rules, see *The Oceano*, 3 P. D. 60.

(n) *The Velocity*, L. R. 3 P. C. 44;

ART. 17.

§ 674. *If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as to involve risk of collision,*(o) *the steam ship shall keep out of the way of the sailing ship.*(p)

Art. 17. Sailing ship and ship under steam.

A steam ship hove to with her engines stopped is "proceeding" within the meaning of this Article.(q)

"The high degree of diligence which is required from a steam ship under the circumstances to which this rule applies has been thus explained by Lord Westbury: 'It cannot be too much insisted on that it is the duty of a steamer, where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power, that can be done consistently with her own safety, in order to avoid collision.'"(r) Accordingly in cases of collision between a steamer and a sailing ship, although the latter may have been guilty of misconduct, or may not have observed the general steering and sailing regulations, the steamer will be held culpable if it appears that it was in her power to have avoided the collision.(s) And where a steamer is charged with having omitted to do something which ought to have been done, proof of three things is required,—first, that it was clearly in the power of the steamer to have done the thing charged to have been omitted;—secondly, that if done it would in all probability have prevented the collision;—and thirdly, that it was such an act as would have occurred to any officer of competent skill and experience in command of the steamer.(s)

A tug with a fully laden ship in tow, steaming in the open sea against a strong head wind, cannot excuse herself under Art. 23 (t) for neglecting to keep out of the way of a sailing ship in accordance with Art. 17.(u)

Only a clear case of necessity will constitute a "special circumstance" under Art. 23,(t) so as to relieve the sailing vessel from the strict obligation of keeping her course, even though the steamer appears to be taking no steps to keep out of her way.(x)

The Esk and *The Niord*, L. R. 3 P. C. 436; *The Ranger*, L. R. 4 P. C. 519; *The Oceano*, 3 P. D. 60; and see Art. 22, *post* § 679.

(o) As to the meaning of "so as to involve risk of collision," see *ante* § 671.

(p) As to how the steamer may keep out of the way, see *ante* § 673; and as to the correlative duty of the sailing ship to keep her course, see Art. 22, *post* § 679; *The Norma*, 35 L. T. 418.

(q) *The Jennie S. Barker*, L. R. 4 Ad. 456.

(r) *The City of Antwerp*, L. R. 2 P. C. at p. 30.

(s) *The City of Antwerp*, L. R. 2 P. C. 25.

(t) *Post* § 680.

(u) *The Warrior*, L. R. 3 Ad. 553; *The American* and *The Syria*, L. R. 6 P. C. 127; but as to a steam trawler, see *The Tweedsdale*, 14 P. D. 164.

(x) *The Highgate*, 62 L. T. 841; *The General Lee*, 19 L. T. 750. As to the Thames rule on this subject, see *The Longnewton*, 59 L. T. 260.

ART. 18.

Art. 18.
Steam ships to slacken speed if necessary.

§ 675. *Every steam ship, when approaching another ship so as to involve risk of collision,*(*y*) *shall slacken her speed, or stop and reverse if necessary.*

This Article only applies when there is a continuous approaching of two steam ships. Thus, when two steam ships "are meeting end on, or nearly end on, so as to involve risk of collision," as provided for in Art. 15, and one of them at a proper distance ports her helm sufficiently to put her on a course which will carry her clear of the other, and enable her to pass on the port side, she thereby determines the risk, and is not approaching another ship so as "to involve risk of collision" within the meaning of Art. 18, and is not bound to slacken speed or stop.(*z*)

Where one steam ship is overtaking another, the leading ship is not "approaching" the hinder one within the meaning of this article, and is consequently under no obligation to slacken her speed, but should keep her course under Arts. 20 and 22.(*a*)

When one steam ship is approaching another whose exact course cannot be at once ascertained, it is the duty of the former to slacken speed and to wait till she has made out the course of the other before acting with her helm. If she fail to do this, and if she execute a manœuvre which, though apparently right at the time, afterwards turns out to be wrong, she will be held to blame if a collision ensues.(*b*)

The exigency of the case, implied in the words "if necessary," is not to be estimated by the event. It depends on whether the circumstances were such that a prudent and reasonable seaman should have come to the conclusion that in order to avoid risk of collision he should stop and reverse.(*c*)

The Khedive.

In *The Khedive* (*d*) it was held that actual necessity alone, and not any considerations of discretion and expediency, could excuse the non-observance of the Regulations. Accordingly *The Khedive*, though her captain showed no want of skill, care, or nerve, when placed in a position of great difficulty by the sudden wrong manœuvring of *The Voorwarts*, was held to blame for not having stopped and reversed at the first moment of danger. On the other hand, in *The Benares*,(*e*) the only chance of escape for *The Gerarda* was to starboard, and continue full speed ahead. This she did, and was held not to blame on the ground that the case

The Benares.

(*y*) As to the meaning of "so as to involve risk of collision," see *ante* § 671.

(*z*) *The Jesmond*, L. R. 4 P. C. 1; *The Rhondda*, 8 Ap. Ca. 549.

(*a*) *The Franconia*, 2 P. D. 8.

(*b*) *The Rona* and *The Ava*, 29 L. T. 781.

(*c*) *The Beryl*, 9 P. D. 137; *The John McIntyre*, 9 P. D. 135; *The Theodore H. Rand*, 12 Ap. Ca. 247; *The Ceto*, 14 Ap. Ca. 670.

(*d*) 5 Ap. Ca. 876.

(*e*) 9 P. D. 16, affirming 48 L. T 127.

was within Art. 23, and that under the circumstances Art. 18 did not apply to her. Art. 18.

The facts in *The Beryl*(*f*) were as follows: *The Abeona* and *The Beryl* were crossing within the meaning of Art. 16, and it was the duty of *The Abeona* to keep out of the way of *The Beryl*. This she made no attempt to do, and *The Beryl* when from a quarter to half a mile distant slackened her speed. When within 300 yards of *The Abeona* she stopped and reversed, but not in time to prevent a collision. *The Beryl* was held to blame for not stopping and reversing sooner. And in *The Stanmore* (*g*) it was held that *The Cornwall* was to blame for not reversing as well as stopping, as soon as probability of risk of collision arose. *The Beryl.* *The Stanmore.*

Though prompt compliance with Art. 18 is thus enforced by these and other (*h*) cases, yet the Court does not hold a man bound to exercise his judgment instantaneously; a short, but a very short time must be allowed him for the purpose of considering whether he should reverse or not.(*i*)

In a fog, if a steamer hears the whistle of another, indicating that she is coming substantially nearer, it is her duty to obey Art. 18, and to stop and reverse, so as to bring herself to a standstill. If she waits till the other ship comes into sight, she will be held to blame if a collision ensues.(*k*)

Art. 19.

§ 676. *In taking any course authorized or required by these regulations, a steam ship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle:* Art. 19. Optional sound signals to indicate course.

One short blast to mean "I am directing my course to starboard."

Two short blasts to mean "I am directing my course to port."

Three short blasts to mean "I am going full speed astern."

The use of these signals is optional, but if they are used the course of the ship must be in accordance with the signal made.

By the Washington Regulations, a "short blast" means a blast of about one second's duration.(*l*)

Apparently this Article has no application where the other vessel is not in sight, *e.g.*, in a dense fog.(*m*)

(*f*) 9 P. 137.

(*g*) 10 P. D. 134. See also *The Lancashire*, (1893) P. 47.

(*h*) See *The Memnon*, 59 L. T. 289; on app. 62 L. T. 84; *Maclaren* v. *Compagnie Française, &c.*, 9 Ap. Ca. 640; *The Arratoon Apcar*, 15 Ap. Ca. 37.

(*i*) *The Emmy Haase*, 9 P. D. 81.

(*k*) *The Frankland* and *The Kestrel*, L. R. 4 P. C. 529; *The Love Bird*, 6 P. D. 80; *The Kirby Hall*, 8 P. D. 71; *The John McIntyre*, 9 P. D. 135; *The Dordogne*, 10 P. D. 6; *The Ebor*, 11 P. D. 25; *The Ceto*, 14 Ap. Ca. 670 *The Lancashire*, (1893) P. 47; and see Art. 13, *ante* § 670.

(*l*) As to a "prolonged blast," see Art. 12, *ante* § 669.

(*m*) Marsden, p. 455.

Art. 20.

Art. 20. Overtaking ship.

§ 677. *Notwithstanding anything contained in any preceding Article, every ship, whether a sailing ship or a steam ship, overtaking any other, shall keep out of the way of the overtaken ship.*(n)

By this Article the overtaking and not the crossing rule is to prevail where there is any doubt, or, in other words, if a vessel is at the same time overtaking and crossing another, she is to be deemed an overtaking and not a crossing ship, and is therefore bound to keep out of the way of the other.(o)

The Priscilla.

In *The Priscilla*,(p) two sailing vessels were beating to windward, close hauled on the same tack, the one a quarter to half a mile behind the other. The leading vessel went about while the other kept her reach, and a collision ensued. It was held that it was the duty of the overtaking vessel to have gone about at the same time as the first, this being the only method under the circumstances of avoiding risk of collision, and that as she had failed to keep out of the way of the other, she was alone to blame. And a sailing vessel, being overtaken by a steamer, is entitled to go about without giving warning of her intention, while it is the duty of the steamer to take measures for avoiding a collision.(q)

Art. 21.

Art. 21. Steam ships in narrow channels.

§ 678. *In narrow channels every steam ship shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such ship.*(r)

No particular width or length has been prescribed as constituting a "narrow channel" within the meaning of this article, but the words have been held to be applicable to the Straits of Messina,(s) the entrance to Falmouth harbour,(t) and the junction of the Cardiff drain with the channel leading to the Roath basin.(u)

Art. 22.

Art. 22. When ship bound to keep her course.

§ 679. *Where by the above rules one of two ships is to keep out of the way,*(x) *the other shall keep her course.*

(n) As to what is an "overtaking" ship within Art. 11, see *ante* § 668. But see also *The Molière*, (1893) P. 217. As to how the overtaking ship may keep out of the way, see *ante* § 673; and as to the correlative duty of the overtaken ship to keep her course, see Art. 22, *post* § 679.

(o) *The Seaton*, 9 P. D. 1; *The Molière*, (1893) P. 217.

(p) L. R. 3 Ad. 125.

(q) *The Palatine*, 27 L. T. 631; but see *The Saragossa*, 68 L. T. 400.

(r) As to the application of this article in waters where local rules of navigation are in force, see Art. 16, *ante* § 673, and Marsden, p. 465 *et seq.*

(s) *The Rhondda*, 8 Ap. Ca. 549.

(t) *The Clydach*, 51 L. T. 668.

(u) *The Leverington*, 11 P. D. 117.

(x) See Arts. 14, 16, 17, 20 *ante*.

If a ship bound to keep her course by this Article justifies her departure from the rule under Art. 23, she takes upon herself the obligation of showing not only that her departure was at the time it took place necessary, in order to avoid immediate danger, but also that the course adopted by her was reasonably calculated to avoid that danger.(*y*) Art. 22.

The word "course" refers to the direction of the vessel's head only, and not to her speed.(*z*)

A close hauled vessel, bound to keep her course, is justified in luffing so as to bring her as close to the wind as she can get, while remaining under command.(*a*)

In considering whether Art. 22 has been infringed, it becomes a question in each case as to whether the moment has arrived at which the Regulations become applicable. They come into operation when the time arrives that if either ship does anything contrary to the Regulations, risk of collision is involved. Consequently anything done before that period is immaterial, because it cannot produce risk of collision.(*b*)

In a winding river, compliance with Art. 22 does not require a ship bound to keep her course to follow the direction in which her head happens to be turned at the moment she sights another vessel. Her duty is to keep the course prescribed by the customary or statutory rules of navigation for the river.(*c*) In a narrow channel, where no special or local rules are in force, Art. 22 is applicable.(*d*)

Art. 23.

§ 680. *In obeying and construing these rules due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.* Art. 23. Proviso to save special cases.

Nothing short of actual necessity will bring a ship within the terms of this Article so as to excuse the non-observance of the Regulations.(*e*) If the only chance of escape from immediate danger lies in the disregard of one of the Regulations, then the case falls within Art. 23, and such disregard will be justified, even though not attended by success.(*f*) But the burden of

(*y*) *The Agra* and *The Elizabeth Jenkins*, L. R. 1 P. C. 501; *The Velasquez*, L. R. 1 P. C. 494; *The Norma*, 35 L. T. 418; *The Byfoged Christensen*, 4 Ap. Ca. 669; *The Highgate*, 62 L. T. 841; *The Saragossa*, 68 L. T. 400.

(*z*) *The Beryl*, 9 P. D. 137; *The Memnon*, 62 L. T. 84.

(*a*) *The Marmion*, 27 L. T. 255; *The Aimo* and *The Amelia*, 29 L. T. 118; but see *The Earl Wemyss*, 61 L. T. 289.

(*b*) See per Lord Esher, M.R., in *The Banshee*, 57 L. T. 841; and *The Norma*, 35 L. T. 418.

(*c*) *The Velocity*, L. R. 3 P. C. 44; *The Esk* and *The Niord*, L. R. 3 P. C. 436; and see Art. 16, *ante* § 673.

(*d*) *The Leverington*, 11 P. D. 117.

(*e*) *The Khedive*, 5 Ap. Ca. 876.

(*f*) *The Benares*, 9 P. D. 16.

Art. 23.

proving strictly the necessity of departing from the Regulations, in order to avoid immediate danger, lies on those who allege the necessity.(*g*) Shortly put, it comes to this, that the Regulations are not to be applied so as to produce danger, but that departure from them can never be justified where there is a possibility of escaping collision by obeying them.(*h*)

Examples.

Examples of "special circumstances," within the meaning of this Article, justifying or requiring departure from the Regulations, are:—the case of a close-hauled vessel on the port tack meeting a vessel on the starboard tack with the wind free, but which neglects to keep out of the way;(*i*) the case of a vessel on the starboard tack meeting one on the port tack which has gone into stays, and is not under command;(*k*) and the case of a steam ship meeting another end on, but unable to port without running on to a sand bank.(*l*) On the other hand the following cases have been held not to be within Art. 23, so as to justify or require a departure from the Regulations;—a tug steaming against the wind with a fully laden ship in tow, and failing to keep out of the way of a sailing ship in the open sea;(*m*) a large steamer towing another of equal size and in a disabled condition, with a great length of hawser between them, and failing to keep out of the way of a sailing ship;(*n*) a steam ship approaching a pilot station for the purpose of taking a pilot on board, and failing to observe Art. 16;(*o*) a steam ship about to go into dock, and failing to observe Art. 16;(*p*) a steam ship approaching another so as to involve risk of collision and neglecting to slacken her speed or to stop and reverse, unless she show that to continue her speed was the best and most seamanlike manœuvre;(*q*) and a sailing ship meeting a steam ship which fails to keep out of the way.(*r*)

The "immediate danger" to be avoided would appear to include immediate danger to another ship.(*s*)

(*g*) *The Concordia*, L. R. 1 Ad. 93; *The Agra* and *The Elizabeth Jenkins*, L. R. 1 P. C. 501; *The Memnon*, 62 L. T. 84; *The Saragossa*, 68 L. T. 400.

(*h*) *The Boanerges*, 2 M. L. C. at 240; *The Khedive*, 5 Ap. Ca. 876; *The Benares*, 9 P. D. 16.

(*i*) *The Commerce*, 3 W. Rob. 287; *The Tasmania*, 15 Ap. Ca. 223; but see *The Byfoged Christensen*, 4 Ap. Ca. 669.

(*k*) *The Ida* and *The Wasa*, 15 L. T. 103; *Wilson* v. *The Canada Shipping Co.*, 2 Ap. Ca. 389.

(*l*) *The Newcastle* and *The Graaf van Rechteren*, Holt, 247.

(*m*) *The Warrior*, L. R. 3 Ad. 553.

(*n*) *The American* and *The Syria*, L. R. 4 Ad. 226; 6 P. C. 127.

(*o*) *The Ada*, 28 L. T. 825.

(*p*) *The St. Audries*, 54 L. T. 278.

(*q*) *The Memnon*, 59 L. T. 289; 62 L. T. 84.

(*r*) *The Highgate*, 62 L. T. 841.

(*s*) *The Saragossa*, 68 L. T. 400.

ART. 24.

No Ship, under any circumstances, to neglect proper Precautions.

§ 681. *Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.*

Art. 24. Proper precautions must be taken.

The Regulations, while laying down specific rules for the guidance of seamen in given cases, must be supplemented by the exercise of such reasonable care and skill as are incident to the ordinary practice of mariners, or required by the particular circumstances of the case. Without these precautions not even the closest obedience to the Regulations will excuse the want of an adequate look-out;(*t*) or the insufficiency of the crew for the proper navigation of the ship, or her care in dock;(*u*) or coming to an anchor in an improper place,(*x*) or with insufficient tackle,(*y*) or without due regard to the safety of other ships.(*z*) So a ship whose duty under the Regulations is to keep her course, is nevertheless bound to keep out of the way of a vessel in stays, the latter being helpless and not under command.(*a*) On the other hand, a ship will be held to blame for improperly going into stays without due regard to the safety of other vessels in her neighbourhood.(*b*)

Examples.

Special precautions are incumbent where there are special difficulties of navigation, such as a risk of smelling the ground,(*c*) or an exceptional current or eddy,(*d*) or a strong tide in a winding river,(*e*) or a dense fog,(*f*) or tempestuous weather,(*g*) or where a steamer's lights are obscured by her own smoke.(*h*) And in navigating rivers or narrow channels, regard must of course be had to local customs as well as to prescribed rules.(*i*)

(*t*) *The Batavier*, 1 Sp. 378; *The Batavier*, 2 W. Rob. 407; *The Mellona*, 3 W. Rob. 7; *The Iona*, L. R. 1 P. C. 426; *The Glannibanta*, 1 P. D. 283.

(*u*) *The Excelsior*, L. R. 2 Ad. 268; *The General Gordon*, 63 L. T. 117; reversed on the facts, 68 L. T. 469; *The Scotia*, 63 L. T. 324; but see *The Hornet*, (1892) P. 361.

(*x*) *The Kjobenhavn*, 30 L. T. 136; *The Aguadillana*, 60 L. T. 897.

(*y*) *The Massachusetts*, 1 W. Rob. 371; *The Ruby Queen*, Lush. 266; *The Despatch*, 14 Moo. P. C. 83; *The Pladda*, 2 P. D. 34; *The Kepler*, 2 P. D. 40 (n); *The City of Peking*, 14 Ap. Ca. 40.

(*z*) *The Volcano*, 2 W. Rob. 337; *The Egyptian*, 1 Moo. P. C. N. S. 373; *The Indian* and *The Jessie*, 12 L. T. 586; *The Maggie Armstrong* and *The Blue Bell*, 14 L. T. 340; *The John Fenwick*, L. R. 3 Ad. 500; *The Vivid*, 42 L. J. Ad. 57; *The Philotaxe*, 37 L. T. 540; *The Queen Victoria*, 64 L. T. 520.

(*a*) *The Ida* and *The Wasa*, 15 L. T. 103; *Wilson* v. *Canada Shipping Co.*, 2 Ap. Ca. 389.

(*b*) *The Kingston-by-Sea*, 3 W. Rob. 152; *The Sea Nymph*, Lush. 23; *The Allan* and *The Flora*, 14 L. T. 860.

(*c*) *The Ralph Creyke*, 55 L. T. 155.

(*d*) *The Rhondda*, 8 Ap. Ca. 549; *The City of Peking*, 14 Ap. Ca. 40.

(*e*) *The Smyrna*, 2 Moo. P. C. N. S. at p. 448; *The Talabot*, 15 P. D. 194.

(*f*) *The Aguadillana*, 60 L. T. 897.

(*g*) *The Uhla*, 19 L. T. 89.

(*h*) *The Rona* and *The Ava*, 29 L. T. 781.

(*i*) *The Fyenoord*, Sw. 374; *The Velo-*

Art. 24.

Where a ship is likely to cause danger to others by reason of her peculiar construction, those in charge of her must neglect no reasonable means or opportunity of warning other ships of the danger of approaching her.(*k*) Dumb barges in the Thames carry neither anchors nor lights, and it is therefore incumbent on other vessels to take special precautions for keeping out of their way.(*l*) When a ship is being launched, those in charge of her are bound to take the utmost precautions to avoid injury to passing vessels. Accordingly they must give reasonable and sufficient notice, and if necessary warn any vessels that may be in the neighbourhood.(*m*) When all necessary precautions have been taken, and due notice given, vessels neglecting to get out of the way will be held to blame if a collision ensues.(*n*)

Art. 25.

Reservation of Rules for Harbours and Inland Navigation.

Art. 25. Saving for local rules.

§ 682. *Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland navigation.*

The Raithwaite Hall.

The legal effect of rules made by local authorities under statutory powers is discussed by Sir R. Phillimore in *The Raithwaite Hall.*(*o*) "There should, however, be no misunderstanding as to the effect of these and similar bye-laws governing the navigation of a river. It cannot be held that, because they or any of them are disobeyed, the vessel disobeying them must therefore be held to blame. They are only evidence of what it is the duty of a vessel to do under the circumstances named in the particular bye-law. As such evidence, however, they are an important element in every case that comes within their provisions, and if it should appear that by the breach of one of them a ship has occasioned or contributed to a collision, the existence of such a bye-law would afford the very strongest reason for holding that that ship had been guilty of a breach of duty, and was to blame for the collision."

city, L. R. 3 P. C. 44; *The Esk* and *The Niord*, L. R. 3 P. C. 436; *The Ranger* and *The Cologne*, L. R. 4 P. C. 519; *The Talabot*, 15 P. D. 194.

(*k*) H.M.S. *Bellerophon*, 44 L. J. Ad. 7.

(*l*) *The Owen Wallis*, L. R. 4 Ad. 175; *The Swallow*, 36 L. T. 231; *The Rose of England*, 59 L. T. 262.

(*m*) *The Blenheim*, 2 W. Rob. 421 *The Vianna*, Sw. 405; *The Andalusian*, 2 P. D. 231; *The George Roper*, 8 P. D. 119.

(*n*) *The Glengarry*, 2 P. D. 235; *The Cachapool*, 7 P. D. 217.

(*o*) 30 L. T. 233; *Cayzer* v. *Carron Co.*, 9 App. Ca. 873. See further as to the operation of local rules, Marsden, 523–527.

Art. 26.

Special Lights for Squadrons and Convoys.

§ 683. *Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for ships sailing under convoy.*

Art. 26 Saving for Government rules for ships of war.

Art. 27.

§ 684. *When a ship is in distress and requires assistance from other ships or from the shore, the following shall be the signals to be used or displayed by her, either together or separately; that is to say,*

Art. 27. Distress signals.

In the daytime—

1. *A gun fired at intervals of about a minute;*
2. *The International Code signal of distress indicated by N.C;*
3. *The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball;*

At night—

1. *A gun fired at intervals of about a minute;*
2. *Flames on the ship (as from a burning tar-barrel, oil-barrel, &c.);*
3. *Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals.*

Duties of Master in Case of Collision.

His duties to his own ship.

§ 685. After a collision, the master and crew of the injured vessel are not bound to incur extraordinary risk of life by remaining on board.(*p*) But it is their duty to exercise ordinary care, nautical skill, and courage, in endeavouring to save their ship from total loss,(*q*) and to do what a reasonable man would do under similar circumstances, when he had no other judgment but his own to resort to.(*r*) When the vessel is injured, and there is any chance of bringing her safe to port, it is the duty of the owner and master to attempt to do so, provided the expense of salvage would not exceed the value of the ship and cargo.(*s*)

When master and crew may abandon.

It is impossible to lay down any general rule as to the precise circumstances which would justify the abandonment of a ship after a collision. But if there be any reasonable prospect that the lives of the crew are in danger, they are justified in quitting the ship, and the consequence of such abandonment must fall on the wrongdoer.(*t*) And where they are called upon to act in an

(*p*) *The Linda*, Swab. 306.
(*q*) *The Thuringia*, 41 L. J. Ad. 44.
(*r*) *Tindal* v. *Bell*, 11 M. & W. 228; *The Flying Fish*, B. & L. at 443; *The Hansa*, 58 L. T. 530.
(*s*) *The Columbus*, 3 W. Rob. at 166.
(*t*) *The Blenheim*, 1 Spinks. 285; *The Columbus*, 3 W. Rob. at 165; *The Linda*, Swab. 306.

The master's duty to his own ship.

emergency, great allowance will be made for the difficulties of their position, especially if the circumstances are such as to create fear and panic.(*u*) If the master has a reasonable doubt whether any measure to be adopted in an emergency would be successful, he is justified in declining to run the risk, and he is not guilty of nautical ignorance or gross negligence in so declining.(*x*)

Emergency.

Duty to sue.

It may be the duty of the master of a ship injured by collision in or near a foreign port, to institute an action *in rem* in the foreign port against the offending ship, on behalf of both ship and cargo. And the cargo owners cannot deny his authority, so long as the suit is pending in their names.(*y*)

Master's duties in case of accident.

§ 686. Masters of steam ships are bound, under a penalty not exceeding fifty pounds, to report to the Board of Trade any accident occasioning material damage to their ship, or loss of life, or serious injury to any person.(*z*) And in case of the loss or abandonment of any ship, it is the master's duty, as we have seen,(*a*) to send home the list prescribed by s. 273 of the Merchant Shipping Act, 1854.(*b*)

Notice to be given of apprehended loss of ship.

It is also the owner's duty, if he have reason to apprehend the loss of his ship, to give notice to the Board of Trade.(*c*)

The Merchant Shipping Act, 1854,(*b*) provides as follows:

Collisions to be entered in official log.

328. In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds.(*d*)

Penalty.

§ 687. And by the Merchant Shipping Act, 1873:(*e*)

The master's duties to the injured ship.

16. In every case of collision between two vessels it shall be the duty of the master or person in charge (*f*) of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance (*g*) as may be practicable and as may be necessary in order to save them from any danger caused by the collision; (*h*) and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

(*u*) *The Lotus*, Holt, 181.
(*x*) *The Flying Fish*, B. & L. at 444.
(*y*) *The Reinbeck*, 60 L. T. 209.
(*z*) 17 & 18 Vict. c. 104, s. 326.
(*a*) *Ante* § 225.
(*b*) 17 & 18 Vict. c. 104.
(*c*) 36 & 37 Vict. c. 85, s. 22.
(*d*) See also s. 282, sub-s. 13, *ante* § 124.
(*e*) 36 & 37 Vict. c. 85.
(*f*) This is not the pilot, but the master; *The Queen*, L. R. 2 Ad. 354.
(*g*) *The Adriatic*, 33 L. T. 102; *The Emmy Haase*, 9 P. D. 81.
(*h*) This does not debar the innocent sufferer in a collision from salvage reward for services subsequently rendered to the other party to the collision; *The Hannibal*, L. R. 2 Ad. 53.

If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.(*i*)

The master's duty to the injured ship.

Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor, and if he is a certificated officer an inquiry into his conduct may be held and his certificate may be cancelled or suspended.

But although it is the duty of every vessel, whether British or foreign, to render assistance to another, which she has injured in collision, this does not compel a ship to remain alongside another so injured, so as to run risk of capture by an enemy's fleet.(*k*)

Two steamships, *The Queen* and the *Lord John Russell*, each being under the charge of a compulsory pilot, came into collision. *The Queen* was solely to blame. After the collision she rendered no assistance to the *Lord John Russell*, and showed no excuse for having failed to do so. It was held that the mere fact of her having a pilot on board did not exempt her owners from liability; but that, if it had been proved that the collision had been caused solely by the neglect of the pilot on board the *Queen*, the subsequent misconduct of the master in not rendering assistance would not have made her owners liable for the collision.(*l*)

(*i*) *The Adriatic*, 33 L. T. 102; *The Emmy Haase*, 9 P. D. 81.

(*k*) *The Thuringia*, 41 L. J. Adm. 44.

(*l*) *The Queen*, L. R. 2 Ad. 354.

CHAPTER XV.

SALVAGE.

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What Salvage is, and how it arises.

"Salvage."

§ 688. SALVAGE is the compensation allowed to persons by whose exertions a ship, or boat, or the cargo of a ship, or the lives (*a*) of persons belonging to her, are saved from danger or loss, in cases of shipwreck, derelict, capture, or the like.(*b*) The word "salvage" is also sometimes employed to designate the property saved and sometimes the services rendered.

How it arises.

"The jurisdiction which the Court exercises in salvage cases is of a peculiarly equitable character. The right to salvage may arise out of an actual contract; but it does not necessarily do so. It is a legal liability, arising out of the fact that property has been saved, that the owner of the property who has had the benefit of it shall make remuneration to those who have conferred the benefit upon him, notwithstanding that he has not entered into any contract on the subject."(*c*)

(*a*) There is no life salvage due in respect of persons taken off a desert island, where they had been previously wrecked, but had got ashore in safety, and were in no immediate danger. *The Cargo ex Woosung*, 3 Asp. 50. But see *The Medina*, 1 P. D. 272, on app. 2 P. D. 5; in which case, however, there was an agreement.

(*b*) Maude & Pollock, p. 637.

(*c*) *Per* Sir J. Hannen, in *Five Steel Barges*, 15 P. D. at 146. As to the effect of a deviation for the purpose of salvage on avoiding a policy on the ship, see *ante* § 280.

On the high seas.

§ 689. The maritime law as administered by the Court of Admiralty has from the earliest times rewarded the salvor of property on the high seas. But the right to remuneration where life alone and not property is saved, and the right to salvage reward generally, when the services are performed within the body of a county, depend entirely on statutes of recent date.

By the Merchant Shipping Act, 1854:(*d*)

Salvage in respect of services rendered in the United Kingdom.

458. In the following cases (that is to say), whenever a ship(*e*) or boat is stranded or otherwise in distress on the shore(*f*) of any sea or tidal water situate within the limits of the United Kingdon, and services are rendered by any person—

(1) In assisting such ship or boat;

(2) In saving the lives of the persons (*g*) belonging to such ship or boat;(*h*)

(3) In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck (*i*) is saved by any person, other than a receiver, within the United Kingdom;

there shall be payable by the owners of such ship or boat, cargo,(*k*) apparel, or wreck, to the person (*l*) by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Life Salvage.

§ 690. The statutory provisions with respect to life salvage are as follows:

Life salvage has priority over other salvage, and may be paid by Board of Trade in certain cases.

459. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage;(*m*) and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

And by the Merchant Shipping Repeal Act, 1854:(*n*)

(*d*) 17 & 18 Vict. c. 104.

(*e*) Includes a hopper barge; *The Mac*, 7 P. D. 126.

(*f*) This means within three miles of the shore. *The Leda*, Sw. 40; *The Mac*, 7 P. D. 126.

(*g*) This includes passengers as well as seamen; *The Fusilier*, 34 L. J. Ad. 25.

(*h*) The ship will not be liable for salvage where the lives saved are those of some of the crew who had deserted her without reason and against orders. *The Cairo*, L. R. 4 Ad. 184.

(*i*) By s. 2 of the Act, "wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

(*k*) *The Fusilier*, 34 L. J. Ad. 25; *The Cargo ex Schiller*, 1 P. D. 473; 2 P. D. 145.

(*l*) Though he render the services because he believes himself to be the owner of the salved ship. *The Liffey*, 58 L. T. 351.

(*m*) *The Coromandel*, Sw. 205. *Cargo ex Schiller*, 1 P. D. 473, 2 P. D. at 155.

(*n*) 17 & 18 Vict. c. 120.

Power to Board of Trade to direct payment of salvage in certain cases.

7. The Board of Trade may, out of the Mercantile Marine Fund, direct payment to be made . . . . for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, and for the granting rewards for the preservation of life, in such cases as it thinks fit.

The jurisdiction of the Court is extended by the Admiralty Court Act, 1861,(*o*) as follows;

Extension of jurisdiction in cases of life salvage.

9. All the provisions of the Merchant Shipping Act, 1854, in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.(*p*)

And by the Merchant Shipping Act Amendment Act, 1862:(*q*)

Application to foreign countries.

59. Whenever it is made to appear to her Majesty, that the government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country, when such ship is beyond the limits of British jurisdiction, her Majesty may, by order in Council, direct that the provisions of the Principal Act(*r*) and of this Act, with respect to salvage for services rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not.(*s*)

Summary of effect of statutes on life salvage.

§ 691. The effect of these sections on the jurisdiction of the Court to award life salvage may be summed up as follows:

The Court has no power to decree a salvage reward for the preservation of life alone, in cases where no property has been saved.(*t*) In other words, there is no general personal liability to pay salvage, but a liability limited to the value of the property saved.(*u*) In the event of the total loss of ship, freight, and cargo, there is nothing to arrest, and therefore there can be no proceeding *in rem*, the ancient foundation of a salvage suit. But since 1846 the Board of Trade may, at its discretion, award remuneration in the nature of salvage in cases where the *res* saved is insufficient to discharge the just claims of the life salvors.(*x*) Previous to that date, where life and property had been saved by one set of salvors, it was the practice of the Court to give a larger amount of salvage than if the property only had been saved,(*y*) though where one set of persons exclusively saved life, and

(*o*) 24 Vict. c. 10, s. 9.
(*p*) *The Willem III.*, L. R. 3 Ad. 487.
(*q*) 25 & 26 Vict. c. 63.
(*r*) The Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104.
(*s*) By Order in Council of 7th April, 1864, these provisions have been extended to Prussian ships.
(*t*) *The Aid*, 1 Hag. 83; *The Zephyrus*, 1 W. Rob. 329; *The Johannes*, Lush. 182; *The Fusilier*, 34 L. J. Ad. 25; *The Willem III.*, L. R. 3 Ad. at p. 494; *Cargo ex Sarpedon*, 3 P. D. 28; *The Renpor*, 8 P. D. 115; *The Annie*, 12 P. D. 50.
(*u*) *Cargo ex Schiller*, 2 P. D. at p. 157; *The Annie*, 12 P. D. 50.
(*x*) *The Fusilier*, 34 L. J. Ad. 25; *The Renpor*, 8 P. D. 115.
(*y*) *The Aid*, 1 Hag. 83; *The Fusilier*, 34 L. J. Ad. 25.

another wholly distinct set saved ship and cargo, the life salvors could not enforce their claim.(z) But now the Court will award life salvage—in priority to any other salvage claim—not only where the life and property salvors are distinct sets of persons,(a) but also in cases where the preservation of the property is in no way due to any salvage service at all.(b) In the case, however, of foreign vessels outside the limits of British jurisdiction, the powers of the Court do not arise till called into existence by an Order in Council under section 59 of the Merchant Shipping Act Amendment Act, 1862. Where the ship is lost and the cargo saved, the latter alone will be liable to contribute.(c)

The Essential Ingredients of a Salvage Service.

Essential elements of salvage.

§ 692. The essential elements of a salvage service are three:
(1) Danger to the life or property salved.
(2) Voluntariness on the part of the salvors.
(3) Actual assistance rendered by the salvors, contributing in some degree to the ultimate safety of the property in danger.

(1) *Danger to the property salved.*

Danger to subject of service.

§ 693. Unless the subject of the service be in some actual, probable,(d) or imminent danger or distress, no claim for salvage service can be maintained.(e) "But it is not necessary that the distress should be actual or immediate, or that the danger should be imminent and absolute. It will be sufficient if, at the time the assistance is rendered, the ship has encountered any damage or misfortune, which might possibly expose her to destruction, if the services were not rendered."(f) And even although a ship has sustained no real damage, and is not in actual danger at the time when the services were rendered to her, still, assistance given to her when in a position of reasonable apprehension of real danger will be of the nature of a salvage service.(g)

(z) *The Zephyrus*, 1 W. Rob. 329; *The Silver Bullion*, 2 Sp. at p. 74; *The Fusilier*, 34 L. J. Ad. 25. But see *The Queen Mab*, 3 Hag. 242.

(a) *The Coromandel*, Sw. 205; *The Eintracht*, 29 L. T. 851.

(b) *Cargo ex Schiller*, 1 P. D. 473; 2 P. D. 145.

(c) *Cargo ex Schiller*, 1 P. D. 473; 2 P. D. 145; *Cargo ex Sarpedon*, 3 P. D. 28.

(d) The ignorance of the master as to the perils which surround him, may be an important element in determining the question of probable or imminent danger. *The Eugenie*, 3 N. of C. at p. 432.

(e) *The Giacomo*, 3 Hag. 344; *The Charlotte*, 3 W. Rob. at 71; *The Aztecs*, 21 L. T. N. S. 797; *The Wilhelmine*, 1 N. of C. 376; *The Princess Alice*, 3 W. Rob. 138; *The Bomarsund*, Lush. 77; *The Strathnaver*, 1 Ap. Ca. 58; *The Cargo ex Woosung*, 1 P. D. 260; *The Jubilee*, 42 L. T. 594.

(f) *Per* Dr. Lushington, *The Charlotte*, 3 W. Rob. at 71; *The Albion*, Lush. 282, in which a ship near a dangerous coast in unsettled weather, with her ground tackle disabled, was held to be in a position of danger. *The Ella Constance*, 33 L. J. Ad. at p. 192.

(g) *The Rosehaugh*, 1 Sp. 267; *The Aztecs*, 21 L. T. 797; *The Raikes*, 1 Hag. 246; *The Phantom*, L. R. 1 Adm. 58; *The Aglaia*, 13 P. D. 160.

Risk to the salvors themselves is not a necessary element of salvage, although it enhances the merit of their services and entitles them to a higher reward.(*h*)

(2) *Voluntariness on the part of the salvors.*

Voluntary nature of the Act.

§ 694. In order to constitute the services rendered an act of salvage, they must be of a voluntary nature. A salvor is "a person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship."(*i*) As a general rule, therefore, neither the pilot, the crew, nor the passengers of the salved ship can claim salvage reward for services rendered in the preservation of the ship, or of life or property on board. In all these cases, however, there may be exceptional circumstances which will impress the services with the character of salvage, and entitle those rendering them to salvage reward.(*k*)

(3) *Actual assistance, rendered by the salvors, contributing in some degree to the ultimate safety of the property in danger.*

Actual assistance contributing to safety.

§ 695. "Salvage reward is for benefit actually conferred in the preservation of property, not for meritorious exertions alone."(*l*) "The foundation of the jurisdiction and authority of the Court is a service actually rendered."(*m*) Or in the words of Sir James Hannen, "There can be no doubt that services, however meritorious, which do not in any way contribute to the ultimate safety of the ship, are not entitled to salvage reward."(*n*) Accordingly, however great the peril to the salvors, however benevolent their intentions or heroic their conduct, they can claim no salvage unless actual assistance be conferred. In other words, salvors who labour unsuccessfully are not entitled to salvage reward.(*o*)

The Ranger.

In *The Ranger*,(*p*) a lugger went out at considerable risk, and in severe weather, for the purpose of assisting a ship, which was at the moment in a dangerous situation. The ship had actually touched the sand, but had got free from it, and was out of danger before the lugger approached her. It was held, that the

(*h*) See *per* Dr. Lushington, *The Pericles*, B. & L. 80; *The Norden*, 1 Spinks, 185; *The Ebenezer*, 8 Jur. 386.

(*i*) *Per* Lord Stowell, in *The Neptune*, 1 Hag. at 236.

(*k*) See *post* §§ 706, 707, 713.

(*l*) *Per* Dr. Lushington, in *The India*, 1 W. Rob. at 408.

(*m*) *Per* Dr. Lushington, in *The Ranger*, 3 N. of C. 589.

(*n*) *The Camellia*, 9 P. D. at p. 29. See also *The Zephyrus*, 1 W. Rob. at p. 330; *The Lockwoods*, 9 Jur. 1017; *The Chetah*, L. R. 2 P. C. 205; *The Edward Hawkins*, Lush. 515.

(*o*) *The Undaunted*, Lush. 90; *The E. U.* 1 Sp. 63; *The Cheerful*, 11 P. D. 3; *The Benlarig*, 14 P. D. 3.

(*p*) *The Ranger*, 3 N. of C. 589.

lugger, having rendered no actual assistance, was entitled to no salvage remuneration, notwithstanding the risk she had encountered.

All contributors to ultimate safety entitled to salvage.

§ 696. Where a salvage service is finally effected, all those who meritoriously contribute to that result are entitled to share in the reward, although the part each took, standing by itself, would not in fact have produced it.(*q*)

The Genessee.

Thus, where a ship in a situation of great peril was assisted with great skill and intrepidity by smacks, but the essential service of bringing her away from the place she was in to a place of safety was performed by a steamer, it was nevertheless held that the smacks, notwithstanding their services were of no effect in the end, were entitled to a large reward.(*r*)

The Santipore.

The Santipore (*s*) got on rocks and received assistance from boats, which were unable to get her off. A tug steamer also tried to tow her off, but in vain. A large passenger steamer afterwards towed her off for a few minutes, when the hawser broke and she went ashore and became a wreck. Part of her cargo, to the value of £9,657, was saved. Salvage was decreed to all.

The E. U.

In the case of the *E. U.*,(*t*) the crews of a life-boat and lugger made great and meritorious efforts to save the *E. U.*, and did what possibly contributed to her ultimate preservation. Part were sent ashore in the life-boat to bring off an anchor and chain. Those who were left on board were compelled to abandon her. She was afterwards found and saved by a steamer, before the life-boat could get back. It was held, that the crews of the life-boat and lugger were entitled to salvage.

The Melpomene.

The Melpomene,(*u*) after being in collision in the Mersey with a steamer, was drifting up the river, and exhibiting signals for assistance. *The Resolute*, a steam-tug, followed, and managed, after considerable difficulty, to get a hawser on board. The tug then steamed ahead, but the hawser came away, not having been made fast on board *The Melpomene*. Other tugs then came up and conveyed the ship into safety. A small amount of salvage reward was decreed to *The Resolute*.

Abandonment by salvors.

But if salvors, whose efforts are unsuccessful, abandon the enterprise without any intention of resuming it, they cannot afterwards claim salvage, if the property be ultimately saved.(*x*)

No salvage where no benefit.

§ 697. No salvage is due where no benefit has been conferred on the property which is the subject of the service.(*y*) Where,

(*q*) *The Jonge Bastiaan*, 5 C. Rob. 322; *The Albion*, 3 Hag. 254; *The Magdalen*, 31 L. J. Adm. 22; *The Samuel*, 15 Jur. at 409; *The Atlas*, Lush. 518; *The Aztecs*, 21 L. T. 797; 21 *The Camellia*, 9 P.D. 27.

(*r*) *The Genessee*, 12 Jur. 401.

(*s*) 1 Spinks, 231.

(*t*) 1 Spinks, 63.

(*u*) L. R. 4 Ad. 129.

(*x*) See *post* § 719; *The India*, 1 W. Rob. 406; *The Killeena*, 6 P. D. 193.

(*y*) *The India*, 1 W. Rob. 406.

therefore, the exertions, however meritorious, of those claiming to be salvors, have resulted in leaving the distressed ship in no better position than at the commencement of the service, no salvage will be payable, though she be subsequently saved.(z)

The Cheerful.

The Cheerful,(a) having lost her propeller, was taken in tow by *The City of Hamburg*, while in a position of risk, but not of imminent danger. After four hours' towing the hawsers passed and *The Cheerful* let go her anchor. At this time she was in a position of considerably greater danger than when the *City of Hamburg* took her in tow. The latter was unable to make fast a hawser again, and being herself in danger shortly afterwards steamed away. *The Cheerful* was afterwards towed into Portland Harbour by two tugs. Notwithstanding that the *City of Hamburg* left *The Cheerful* near Portland Harbour, where tugs can be obtained, Butt, J., held that no salvage was due, on the ground that no benefit had been conferred.

The Benlarig.
The Lepanto.

This rule was subsequently followed in *The Benlarig*,(b) and *The Lepanto*,(c) in both of which cases, however, remuneration was awarded by way of a *quantum meruit* under an agreement to tow.

Where assistance engaged.

§ 698. Where, however, assistance is engaged by a ship in distress, whether generally or particularly, it will be entitled to remuneration in the nature of salvage, even though the labour and service may not prove beneficial to the vessel. "The engagement to render assistance to a vessel in distress, and the performance of that engagement, so far as necessary, or so far as possible, establish a title to salvage reward."(d)

But the remuneration awarded in these cases is not strictly speaking "salvage reward," but rather a *quantum meruit* under the agreement between the salvors and the vessel in distress.(e)

Salvage after collision.

§ 699. A ship, which renders assistance to another, which she has injured in collision, cannot claim salvage reward as against either ship or cargo, if the collision is caused by her own default, nor even if both vessels are found to blame.(f) But the mere fact of a ship belonging to the owners of the vessel which caused the collision, will not deprive her of the right to salvage reward, if she render salvage assistance.(g)

(z) *The Edward Hawkins*, Lush. 515.
(a) 11 P. D. 3.
(b) 14 P. D. 3.
(c) (1892) P. 122.
(d) *The Undaunted*, Lush. 90; *The Melpomene*, L. R. 4 Ad. 129; *The Aztecs*, 21 L. T. 797; *The Maude*, 36 L. T. 26. And see 36 & 37 Vict. c. 85, s. 18, *post* § 700.
(e) *The Benlarig*, 14 P. D. 3; *The Lepanto*, (1892) P. 122. And see *The Alfred*, 50 L. T. 511.
(f) *The Glengaber*, L. R. 3 Ad. 534; *The Cargo ex Capella*, L. R. 1 Ad. 356.
(g) *The Glengaber*, L. R. 3 Ad. 534.

What Signals a Ship in Distress must use when Signalling for Assistance.

§ 700. Formerly, when salvors were induced, by ambiguous signals, to go out to a ship which was signalling for assistance, disputes often arose as to whether the ship was signalling for assistance or for a pilot, and as to whether the salvors were entitled to salvage or not. The Court determined the question by the condition of the vessel signalling.(*h*) In order to avoid such disputes, to prevent salvors incurring danger and labour for nothing, and to enable persons at a distance to determine whether a ship is in distress or in want of a pilot, the following provisions have been enacted by the Merchant Shipping Act, 1873 :(*i*)

Signals of distress.

18. The signals specified in the first schedule to this Act shall be deemed to be signals of distress.(*k*)

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained in consequence of such signal having been supposed to be a signal of distress, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable.(*l*)

* * * * * * *

SCHEDULE I.

Signals of Distress.

In the day time.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the day time :—

1. A gun fired at intervals of about a minute;
2. The International Code signal of distress indicated by N C;
3. The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball.

At night.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night :—

1. A gun fired at intervals of about a minute;
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.);
3. Rockets or shells, of any colour or description, fired one at a time, at short intervals.

(*h*) *The Bomarsund*, Lush. 77; *The Little Joe*, Lush. 88; *The Hedwig*, 1 Sp. at p. 23; *The Racer*, 30 L. T. 904. And see *The Aglaia*, 13 P. D. 160.

(*i*) 36 & 37 Vict. c. 85.

(*k*) See 39 & 40 Vict. c. 80, s. 21, *ante* § 594. For the signals to be used when a pilot is wanted, see *ante* § 559.

(*l*) S. 21 enables a shipowner to register a private code of signals with the Board of Trade, and exempts from penalties the use thereof by any one acting under the authority of the shipowner.

What kind of Services are treated as Salvage Services.

Examples of salvage services.

§ 701. The following have been held to be salvage services entitling to salvage reward:—

Supplying seamen to a vessel on the high seas, which is short-handed and in distress, or a master to a vessel on the high seas, whose master is sick or dead;(*m*)

Going on board an infected vessel, and navigating her home when shorthanded;(*n*)

Saving lives and property on board a burning ship;(*o*)

Assisting to extinguish the flames in a ship which has taken fire by spontaneous combustion, and towing her into port;(*p*)

Towing a disabled ship into safety;(*q*)

Towing a ship in distress towards her port of destination for several hours, although parted afterwards by no fault of the salving ship, and although the salving ship did not rejoin the ship in distress, from the honest belief that further assistance was not needed;(*r*)

Towing into safety a ship lying in dock and in danger of catching fire from surrounding warehouses which were in flames;(*s*)

Going on board a vessel in distress, and piloting her into harbour;(*t*)

Securing wreck, or protecting the cargo of a stranded ship by removing it to a place of safety;(*u*)

Saving by transhipment the cargo of a vessel in distress;(*x*)

Bringing into port a derelict, or part of her cargo;(*y*)

Furnishing a cable or an anchor and chain in boisterous weather to a ship at sea which had slipped her cable;(*z*)

Getting afloat a ship which had driven ashore;(*a*)

Raising a sunken ship by means of apparatus;(*b*) or cargo by means of divers;(*c*)

(*m*) *The Roe*, Swab. 84; *The Janet Mitchell*, Swab. 111; *The Golondrina*, L. R. 1 Ad. 334; *The Charlotte Wylie*, 2 W. Rob. 495; *The Charles*, L. R. 3 Ad. 536; *The See Nymphe*, 3 Asp. 557 (n).

(*n*) *The Active*, 14 Jur. 606; *The Skibladner*, 3 P. D. 24.

(*o*) *The Eastern Monarch*, Lush. 81.

(*p*) *The Rosalie*, 1 Spinks, 188.

(*q*) *The Ellora*, Lush. 550; *The Kenmure Castle*, 7 P. D. 47.

(*r*) *The Nellie*, 29 L. T. 516.

(*s*) *The Tees*, Lush. 505; *The Eleonore*, B. & L. 185.

(*t*) *The Anders Knape*, 4 P. D. 213.

(*u*) *The Happy Return*, 2 Hagg. 198; *The Favourite*, 2 W. Rob. 255; *The Purissima Concepcion*, 3 W. Rob. 181; *The Cargo ex Honor*, L. R. 1 Adm. 87; *The Cargo ex Ulysses*, 13 P. D. 205; *The Liffey*, 58 L. T. 351.

(*x*) *The Hope*, 3 Hagg. 423; *The Columbia*, 3 Hagg. 428; *The Westminster*, 1 W. Rob. 229.

(*y*) *The King* v. *Property Derelict*, 1 Hagg. 383; *The Atlas*, Lush. 518; *The Magdalen*, 31 L. J. Adm. 22; *The Hebe*, 4 P. D. 217.

(*z*) *The Prince of Wales*, 6 Notes of Cas. 39.

(*a*) *The Rajasthan*, Swab. 171; *The Erato*, 13 P. D. 163.

(*b*) *The Catherine*, 12 Jur. 682.

(*c*) *The Cadiz* and *The Boyne*, 35 L. T. 602.

Examples of salvage services.

Recapturing a ship from pirates;(*d*) from mutineers;(*e*) from insurgent slaves;(*f*) from an enemy;(*g*)

Rescuing and removing into deep water a ship which was ashore and in danger of being plundered by savages;(*h*)

Going near a ship in danger, and on a bank, when it was unsafe to attempt to get alongside, and hailing her to adopt certain measures for her safety, which were adopted by her and which contributed to save her;(*i*)

Lying by a ship at anchor in a gale, at her request, and being ready to take her in tow, or to render assistance, if required;(*k*)

Proceeding at the request of a ship, which had parted with both her anchors and cables, to the nearest port, and bringing off an anchor and cable;(*l*)

Rescuing a fishing vessel, frozen up in Davis's Straits;(*m*)

Carrying an order for a steamer to go out of harbour to a vessel in danger and distress;(*n*)

Saving a ship from an impending peril,—*e.g.*, a collision;(*o*)

Separating two ships in collision.(*p*)

Services rendered by vessels necessarily and properly employed by the salving ship, will be entitled to salvage reward.(*q*)

Not necessary to prove, request for, or acceptance of, service.

Express demand or express acceptance of salvage services actually performed is not necessary to entitle to salvage reward; it is sufficient, if the circumstances were such, that if an offer of service had been made, any prudent man would have accepted it.(*r*)

Who may Claim as Salvors.

General rule.

§ 702. The right to salvage is a right very much favoured by the law,(*s*) and, as we have already seen,(*t*) where a salvage service is finally effected, all who meritoriously contribute to that result are entitled to share in the reward, although the part each took, standing by itself, would not in fact have produced it.(*u*)

(*d*) *The Marianna*, 3 Hagg. 206; *The Calypso*, 2 Hagg. 209.

(*e*) *The Francis and Eliza*, 2 Dods. 115; *The Trelawney*, 4 C. Rob. 223; and see *The Governor Raffles*, 2 Dods. 14.

(*f*) *The Trelawney*, 4 C. Rob. 223; *The Anne*, 5 C. Rob. at p. 101.

(*g*) *The Louisa*, 1 Dods. 317; *The Beaver*, 3 C. Rob. 292.

(*h*) *The Lady Worsley*, 2 Spinks, 253.

(*i*) *The Eliza*, Lush. 536.

(*k*) *The Undaunted*, Lush. at p. 92; *The Philotaxe*, 29 L. T. 515; *The Maude*, 36 L. T. 26.

(*l*) *The Undaunted*, Lush. 90.

(*m*) *The Swan*, 1 W. Rob. 68.

(*n*) *The Ocean*, 2 W. Rob. 91; *The Sarah*, 3 P. D. 39.

(*o*) Even during the performance of a contract of towage; *The Saratoga*, Lush. 318.

(*p*) *The Woburn Abbey*, 21 L. J. 707; *The Vandyck*, 7 P. D. 42.

(*q*) *The Undaunted*, Lush. 90. And see *The True Blue*, 2 W. Rob. 176.

(*r*) *The Annapolis*, Lush. 355; *The Vandyck*, 7 P. D. 42; *The Liffey*, 58 L. T. 351.

(*s*) *The Waterloo*, 2 Dods. at p. 435; *The Sappho*, L. R. 3 P. C. at 695.

(*t*) *Ante* § 696.

(*u*) *The Atlas*, Lush. 518; *The Rosalind*, 12 L. T. 553. But a person merely hiring labourers to assist in the unloading

Master and crew of salving ship.

§ 703. The master and crew of the salving ship are entitled to salvage remuneration in all cases, and even in those where the salving ship and the ship salved belong to the same owners, if, in the latter case, the services performed are not within the contract into which they originally entered with the owners, and for which they would be paid by their wages.(*x*) Those of the crew who remain on board the salving ship are entitled to be considered as co-salvors with those of the crew who actually effected the salvage; although the Court has repeatedly made a distinction in favour of those who actually incurred the difficulty and peril of the salvage enterprise.(*y*)

Thus, in *The Janet Mitchell*,(*z*) salvage was awarded to the owners, master, and crew of a vessel whose mate had gone on board a ship in distress on the high seas to supply the place of her master, who had been drowned.

If, however, any of the crew refuse to concur with the rest in undertaking a salvage service, they are not entitled to any share in the reward.(*a*)

In the case of ships employed in the public service, *e.g.*, Queen's ships,(*b*) and lightships,(*c*) the general rule is different, and salvage remuneration is confined to the persons actually engaged in the salvage service.

Passengers.

Passengers(*d*) on board the salving ship, and those who are merely nominally on the ship's books,(*e*) if they join or assist in the salvage enterprise, are entitled to a share of the reward.

Owners of salving ship.

§ 704. The principle that formerly guided the Court in decreeing salvage, was that salvage reward was given for personal services. Consequently, for a long time, the claims of the owners of the salving ship were not much regarded, unless their property was exposed to danger, or unless they incurred some real loss or inconvenience.(*f*) But the introduction of steam has effected a considerable change in the practice of the Court.

In cases of salvage by steamers, the ship herself is often the chief agent, and the risk and expense to the owners are much greater than formerly. It is, therefore, only equitable that they should be rewarded in a much higher proportion than formerly.(*g*)

of a stranded vessel, although entitled to some remuneration for his superintendence, will not be entitled to claim as a salvor; *The Watt*, 2 W. Rob. 70.

(*x*) *The Caroline*, Lush. 334; *The Sappho*, L. R. 3 Ad. 142; affirmed on appeal, L. R. 3 P. C. 690; *The Miranda*, L. R. 3 Adm. 561; *The Agamemnon*, 48 L. T. 880; *The Glenfruin*, 10 P. D. 103.

(*y*) *The Sarah Jane*, 2 W. Rob. at p. 115; *The Mountaineer*, 2 W. Rob. 7; *The Baltimore*, 2 Dods. 132; *The Charles*, L. R. 3 Ad. 536; *The Roe*, Swab. 84; and see *The Spree*, (1893) P. 147.

(*z*) Swab. 111.

(*a*) *The Baltimore*, 2 Dods. 132.

(*b*) *H.M.S. Thetis*, 3 Hag. at p. 61; *The Nile*, L. R. 4 Ad. 449.

(*c*) *The Emma*, 3 W. Rob. 151.

(*d*) *The Hope*, 3 Hag. 423; *The Salacia*, 2 Hag. at p. 269.

(*e*) *The Coriolanus*, 15 P. D. 103.

(*f*) *The Vine*, 2 Hag. 1; *The Jane*, 2 Hag. at p. 343; *The Enchantress*, Lush. 93.

(*g*) *The Spirit of the Age*, Swab. 286; *The Enchantress*, Lush. 93; *The Kenmure Castle*, 7 P. D. 47.

The case of the owner is the chief exception to the general rule that a party not actually occupied in effecting a salvage service, is not entitled to share in a salvage remuneration.(*h*) Though not personally engaged in the undertaking, and though he has incurred no personal risk, yet he is almost invariably adjudged to be entitled to participate largely in any salvage that may be awarded.(*i*)

Where some of the owners of the salving vessel have an interest in the vessel salved, their co-owners, not so interested, may sue for salvage.(*k*) And where the two ships belong wholly to the same parties, the owners of the salving ship are entitled to recover against the cargo in the salved ship, unless the danger which gave rise to the salvage service was due to the default of the plaintiffs as carriers of the cargo.(*l*) In this case the cargo owners will be entitled on counterclaim to recover as damages the whole amount of the salvage awarded, as against them, to the owners, master, and crew of the salving ship.(*m*)

Charterers.

§ 705. The charterer of a ship has no claim to reward for salvage services rendered by the ship unless the charter amounts to a demise of the vessel,(*n*) or unless there are express terms in the charter-party giving the charterer the right to control salvage, and the benefit of the salvage, if performed.(*o*) In these cases the charterer, and not the owner, will be entitled to salvage. The fact of the salving vessel being under charter to the owner of the salved, does not debar the owner of the vessel rendering the services from claiming as salvor,(*p*) unless the charter-party amounts to a demise of the ship, in which case neither owner nor charterer—being owner *pro hâc vice*—can claim. Nor, conversely, does the fact of the salved vessel being under charter to the owner of the vessel rendering the services, prevent the owner of the latter from claiming salvage reward,(*q*) unless the effect of the charter-party is to divest the owner of the possession and control of the vessel, and to transfer the same for the time to the charterer.(*r*) In this case, as before, neither owner nor charterer can claim.

Officers and crew of ship salved.

§ 706. The officers and crew of a ship are bound by their contract to do their utmost to save the ship and cargo in case of

(*h*) *The Vine*, 2 Hag. 1; *The Two Friends*, 2 W. Rob. 349.

(*i*) But the owner of boats rendering a salvage service, not having been personally present at the time, is not entitled to sue as a salvor, though some remuneration may be due to him for the use of his boats, by way of equitable compensation. *The Charlotte*, 3 W. Rob. 68.

(*k*) *The Caroline*, Lush. 334.

(*l*) *The Miranda*, L. R. 3 Ad. 561; *The Glenfruin*, 10 P. D. 103; *The Cargo ex Laertes*, 12 P. D. 187.

(*m*) *The Glenfruin*, 10 P. D. 103.

(*n*) As to what is a demise of the vessel, see *ante* § 301.

(*o*) *The Alfen*, Swab. 189; *The Scout*, L. R. 3 Ad. 512.

(*p*) *The Waterloo*, 2 Dods. 433.

(*q*) *The Collier*, L. R. 1 Ad. 83.

(*r*) *The Maria Jane*, 14 Jur. 857.

Officers and crew of ship salved.

danger, or mutiny, or wreck.(s) Since, as a general rule, seamen cannot recover salvage remuneration for services which by their contract they are bound to perform, it follows that they cannot recover for services connected with the saving of their own ship, as long as the relation of master and servant exists between them and their owner with reference to that ship. But, if a seaman perform services for the benefit of the owner, which are not within his contract, he may become entitled to salvage remuneration. And if, in obedience to the orders of the master, he perform salvage services, which it may be his duty on account of those orders to perform, he will nevertheless be entitled to salvage remuneration if the services are not within his contract.(t)

The crew of a ship are not entitled to salvage for rescuing her from mutineers, because it is part of their duty to give every assistance in their power to prevent or quell a mutiny, and to use their utmost exertion to preserve or recover the possession of the vessel and goods of their employers.(u)

Abandonment, when it puts an end to mariner's contract.

On the other hand, if the contract between the owners and the crew is dissolved by the final abandonment of the ship, or by the act of the master giving the seamen a discharge, they may subsequently render services towards the preservation of the ship or cargo, which will entitle them to salvage reward.(x) In order that an abandonment should operate so as to put an end to the contract of the mariners, the following circumstances must concur: "*First*, the abandonment must take place at sea, and not upon a coast; for if a ship be driven upon a coast and become a wreck and the mariners escape to the shore, the contract enures to this extent at least, that if they act as salvors, and successfully, so as to save enough to pay their wages, they will be entitled to them, though not to salvage, and if they do not so exert themselves their wages are lost;—*secondly*, the abandonment must be *sine spe revertendi*, for no one would contend that a temporary abandonment, such as frequently occurs in collisions, from immediate fear, before the state of the ship is known, would vacate the contract;—*thirdly*, the abandonment must be *bonâ fide* for the purpose of saving life;—*fourthly*, it must be by order of the master, in consequence of danger by reason of damage to the ship and the state of the elements."(y) The master is the proper person to form a judgment whether abandonment be absolutely necessary or not. Accordingly, in all cases of *bonâ fide* abandonment the crew are justified in obeying the orders of the master to

(s) *The Neptune*, 1 Hag. at p. 236; *The Florence*, 16 Jur. 572; *The Governor Raffles*, 2 Dods. 14; *The Warrior*, Lush. 476; *The Sappho*, L. R. 3 P. C. at p. 694.

(t) *The Sappho*, L. R. 3 P. C. 690.

(u) *The Governor Raffles*, 2 Dods. 14.

(x) *The Warrior*, Lush. 476; *The Florence*, 16 Jur. 572; *Le Jonet*, L. R. 3 Adm. 556.

(y) Per Dr. Lushington, *The Florence*, 16 Jur. 572.

quit the ship.(z) The abandonment must be clearly proved, for where the circumstances are doubtful, the Court will be reluctant to infer that property of great value has been abandoned, unless it be shown that there was no reasonable hope of recovery.(a)

Capture and re-capture.

The contract of the seamen is dissolved by the capture of the ship by an enemy. And if, after such capture, the crew rescue her, they are entitled to salvage, for they are not bound by their general duty as mariners to attempt a rescue.(b)

Passengers on ship salved.

§ 707. When there is a common danger, it is the duty of every one on board to give all the assistance he can. Accordingly, passengers on the ship salved cannot, as a general rule, claim salvage for services rendered in a time of common danger, and which, in fact, are primarily directed towards the preservation of their own lives and property.(c) But they are not bound, like the mariners, to remain on board. They may take the first opportunity of escaping from the ship and saving their own lives.(d) If, therefore, they elect to remain on board, in danger, for the purpose of assisting to save the vessel, or if they perform extraordinary services towards the preservation of ship or cargo, they will be entitled to share in any salvage that may be awarded.(e) Thus, in *Newman* v. *Walters*,(f) the master and part of the crew having abandoned the ship, the pilot being drunk, and the ship on the rocks, a passenger, who was a master mariner, took the command and brought the ship safely into harbour. He was held entitled to salvage reward. And in *The Two Friends*,(g) a passenger on board a ship captured by the enemy, who assisted the crew in rescuing her, was allowed to rank as a salvor.

Associated ships.

§ 708. Where ships sail together as consorts and under an agreement to render each other mutual assistance, no salvage remuneration is payable for any services which one of them may render to the other.(h) "But, the claim of being discharged from a liability to salvage is one which a court would not be justified in a admitting, unless the discharge appeared in express terms, and in contract, that, by the use of clear and explicit language, should remove all doubt respecting the common understanding of both parties."(i) Nor will salvage be due where there is a custom in any particular trade for vessels to assist each other in distress.(k)

(z) Per Dr. Lushington, *The Florence*, 16 Jur. 572.

(a) *The Warrior*, Lush. 476.

(b) *The Governor Raffles*, 2 Dods. at 17; *The Two Friends*, 1 C. Rob. at 278; *The Beaver*, 3 C. Rob. 292.

(c) *The Vrede*, Lush. 322; *The Branston*, 2 Hagg. 3, n.

(d) *The Branston*, 2 Hagg. 3, n.

(e) *Newman* v. *Walters*, 3 B. & P. 612; *Towle* v. *The Great Eastern*, 11 L. T. 516.

(f) 3 B. & P. 612.

(g) *The Two Friends*, 1 C. Rob. at p. 285.

(h) *The Zephyr*, 2 Hagg. 43; *The Waterloo*, 2 Dods. at p. 437.

(i) Per Sir W. Scott, *The Waterloo*, 2 Dods. at p. 436; *The Margaret*, 2 Hagg. 48 n.

(k) *The Swan*, 1 W. Rob. 68; *The Harriot*, 1 W. Rob. 439; *The Maria Jane*, 14 Jur. 857.

And there may be such a connection between two ships as would affect the *quantum* of salvage, though it might not bar the claim.(*l*)

Officers and crews of Queen's ships.

§ 709. Officers and crews of her Majesty's ships, on obtaining the consent of the Admiralty, may recover salvage for their personal services, although no claim can be made on account of the assistance given by the ship herself for any risk or damage which she may have incurred.(*m*) And the fact that the salvors do not risk their own property is taken into consideration by the court in fixing the amount of salvage.(*n*) Nor can the commander of a Queen's ship, sent to render help to a wrecked ship, impose terms and refuse to give salvage services unless those terms are accepted.(*o*)

The following sections of the Merchant Shipping Act, 1854,(*p*) deal with this subject:

484. In cases where salvage services are rendered by any ship belonging to her Majesty,(*q*) or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to her Majesty supplied in order to effect such services, or for any other expense or loss sustained by her Majesty by reason of such services.

485. No claim whatever on account of any salvage services rendered to any ship or cargo, or to any appurtenances of any ship by the commander or crew or part of the crew of any of her Majesty's ships shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the secretary to the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the court, his suit shall stand dismissed, and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent and to be signed by the secretary to the Admiralty shall be *primâ facie* evidence of such consent having been given.

Steps to be taken when salvage services have been rendered by her Majesty's ships abroad.

486. Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom and the four seas adjoining thereto, by the commander or crew or part of the crew of any of her Majesty's ships, the property alleged to be salved shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court; and within twenty-four hours after arriving at such port the said salvor and the master or other per-

(*l*) *The Trelawney*, 4 C. Rob. at p. 227; *The Ganges*, 1 N. of C. 87; *The Collier*, L. R. 1 Ad. 83.

(*m*) *The Earl of Eglington*, Swab. 7; *The Alma*, Lush. 378; *The Louisa*, 1 Dods. 317; *The Wilsons*, 1 W. Rob. 172; *The Ewell Grove*, 3 Hagg. 209; *The Iodine*, 3 Notes of Cas. 140; *The Charlotte Wylie*, 2 W. Rob. 495; *The Mary Pleasants*, Swab. 224.

(*n*) *The Earl of Eglington*, Swab. 7; *The Alma*, Lush. 378.

(*o*) *The Cargo ex Woosung*, 1 P. D. 260.

(*p*) 17 & 18 Vict. c. 104.

(*q*) This includes a ship belonging to the Bombay Government, *The Cargo ex Woosung*, 1 P. D. 260; *The Dalhousie*, 1 P. D. 271; but not a hired transport under Government charter; *The Nile*, L. R. 4 Ad. 449; *The Bertie*, 55 L. T. 520; nor a vessel belonging to the Board of Trade; *The Cybele*, 2 P. D. 224; 3 P. D. 8.

son in charge of the property alleged to be salved shall each deliver to the consular officer or vice-admiralty judge there a statement, verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

Officers and crews of Queen's ships.

(1) The place, condition, and circumstances in which the said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed:

(2) The nature and duration of the services rendered:

And the salvor shall add to his statement—

(3) The proportion of the value of the said ship, cargo, and property, and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo and property respectively, and the several amounts that he claims for salvage in respect of the same;

(4) Any other circumstances he thinks relevant to the said claim:

And the said master or other person in charge of the said ship, cargo, or property shall add to his statement—

(3) A copy of the certificate of registry of the said ship, and of the indorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers:

(4) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on:

(5) A general account of the quantity and nature of the cargo at the time the salvage services were rendered:

(6) The name and place of business or residence of the owner of such cargo and of the consignee thereof:

(7) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest:

(8) The amounts which the master thinks should be paid as salvage for the services rendered:

(9) An accurate list of the property saved in cases where the ship is not saved:

(10) An account of the proceeds of the sale of the said ship, cargo, or property, in cases where the same or any of them are sold at such port as aforesaid:

(11) The number, capacities, and conditions of the crew of the said ship at the time the said services were rendered:

(12) Any other circumstances he thinks relevant to the matters in question.

(13) A statement of his willingness to execute a bond, in the form in the table marked W (*r*) in the schedule hereto, in such amount as the said consular officer or vice-admiralty judge may fix.

§ 710. The procedure to be adopted in cases of salvage by Queen's ships is further prescribed as follows:

Consular officer or judge to fix amount

487. The said consular officer or judge, as the case may be, shall within four days after receiving the aforesaid statements, fix the

(*r*) See Appendix No. 15.

for which a bond is to be given.

amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered; but such sum shall not exceed one half of the value which in his estimation the said ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this Act require the cargo to be unladen; and the said consular officer may in any proceeding under this Act relating to salvage take affidavits and receive affirmations.

On master executing bond, the right of detention to cease.

488. The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid, to the said salvor and the said master; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property or any of them, in respect of the said salvage claim, shall cease.

Provision for additional security in the case of ships owned by persons resident out of Her Majesty's dominions.

489. If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose.

Documents to be sent to England.

490. The said consular officer or judge shall at the earliest opportunity transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any vice-admiralty court, to such court.

Whom the bond shall bind.

491. The said bond shall bind the respective owners of the said ship, freight, and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to be payable in respect of the said ship, freight, and cargo respectively.

Court in which it is to be adjudicated on.

492. The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master, at the time of the execution of the said bond, agree upon any vice-admiralty court, then by such vice-admiralty court; and any such vice-admiralty court may in every proceeding under this Act, have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or vice-admiralty judge, or of such officer or judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the court that adjudicates on the bond directs.

Power of High Court of Admiralty to enforce bonds.

493. The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any vice-admiralty court in any part of her Majesty's dominions; and all courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man, exercising admiralty jurisdiction, shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds.

494. Any such salvor as aforesaid of any ship, cargo, or property, who elects not to proceed under this Act, shall have no power to detain the said ship, cargo, or property, but may proceed otherwise for the enforcement of his salvage claim as if this Act had not been passed; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for. Saving clause.

495. All bonds, statements, agreements, and other documents made or executed in pursuance of the eighth part of this Act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty. Documents free from duty.

496. Every person who, in any proceeding under provisions contained in the eighth part of this Act relating to salvage by her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with imprisonment, with or without hard labour, for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months. Punishment for forgery and false representations.

By an order of the Board of Admiralty of the 30th January, 1852, officers of her Majesty's ships are directed not to claim for salvage services, unless the service was really important or accompanied with hazard.(*s*)

§ 711. Although it is part of their duty to the public to save life and property, officers and men of the coastguard are entitled to salvage reward for salvage services, if they incur risk or undertake labours beyond the scope of the obligations imposed upon them by law.(*t*) For their services in watching or protecting shipwrecked property, remuneration is in certain cases payable by the owner, on a scale fixed by the Board of Trade.(*u*) Coastguardsmen. Remuneration for services in protecting shipwrecked property.

§ 712. Where services towards the preservation of a ship or cargo are performed by a ship's agent, it becomes a matter of nicety to draw the line between salvage and agency. As a general rule, ship agents are only allowed to claim as salvors where they render extraordinary services in saving a ship or cargo.(*x*) But in order to support a claim for salvage it appears to be unnecessary that they should take an active part in the enterprise, or incur any personal risk.(*y*) Ship's agents.

§ 713. As we have already seen,(*z*) pilots (*a*) cannot as a general rule claim as salvors. The Court discourages the attempt to con-

(*s*) And see *The Rapid*, 3 Hagg. 419; *The Francis and Eliza*, 2 Dods. 115.

(*t*) *The Charlotta*, 2 Hagg. 361; *The London Merchant*, 3 Hagg. 394; *The Silver Bullion*, 2 Spinks, 70.

(*u*) See *post* § 757.

(*x*) *The Happy Return*, 2 Hagg. 198; *The Watt*, 2 W. Rob. 70; *The Favourite*, 2 W. Rob. 255; *The Cargo ex Honor*, L. R. 1 Ad. 87; *The Kate B. Jones*, (1892) P. 366.

(*y*) *The Purissima Concepcion*, 3 W. Rob. 181.

(*z*) *Ante* § 576.

(*a*) Persons assuming the characters and duties of pilots fall within the same rule; *The Columbus*, 2 Hagg. 178, n; *The Æolus*, L. R. 4 Ad. 29.

vert pilotage into salvage,(*b*) and holds that the proper reward for extraordinary pilot service is additional pilotage.(*c*)

Pilots.

But no pilot is bound to go on board a ship in distress,(*d*) to render pilot service, for mere pilotage reward. His refusal under such circumstances would subject him to no censure, and his taking charge of a ship under such circumstances would entitle him to salvage remuneration.(*e*) And a pilot, although originally employed to render pilotage services to a ship not in distress, may, notwithstanding, become entitled to salvage remuneration for the safe conduct of such ship into port, if circumstances of peril or exertion supervene, so as to alter the character of the service;(*f*) or if he should be called upon in any emergency to perform services necessary for the safety of the ship and not within his duties as pilot;(*g*) for pilotage is confined to conducting into port, in the ordinary and common course of navigation, a ship which is in no state of distress or alarm.(*h*)

Tugs.

§ 714. The circumstances under which a contract of towage becomes superseded by the right to salvage cannot be better expressed than in the words of Lord Kingsdown, delivering the judgment of the Privy Council in *The Minnehaha*:(*i*) "When a steamboat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so and will do so under all circumstances and at all hazards; but she does engage that she will use her best endeavours for that purpose, and will bring to the task competent skill, and such a crew, tackle, and equipments as are reasonably to be expected in a vessel of her class.(*k*) She may be prevented from fulfilling her contract by a *vis major*, by accidents which were not contemplated, and which may render the fulfilment of her contract impossible, and in such case, by the general rule of law, she is relieved from her obligations. But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task;(*kk*) because the performance of the task is interrupted, or cannot be completed in the mode in which it was originally intended, as by the breaking of the ship's hawser.

Towage and salvage.

(*b*) *The General Palmer*, 2 Hagg. 176; *The City of Edinburgh*, 2 Hagg. 333; *The Jonge Andries*, Sw. 226, 303; *The Æolus*, L. R. 4 Ad. 29.

(*c*) *The Enterprise*, 2 Hagg. 178 (n).

(*d*) *Akerblom* v. *Price*, 7 Q. B. D. 129.

(*e*) *The Frederick*, 1 W. Rob. 16; *The Jonge Andries*, Swab. 226, 303; *The Cumberland*, 9 Jur. 191; *The King Oscar*, 6 N. of C. 284; *The Elizabeth*, 8 Jur. 365; *The Hedwig*, 1 Sp. 19; *The Æolus*, L. R. 4 Adm. 31; *The Anders Knape*, 4 P. D. 213; *The Aglaia*, 13 P. D. 160.

(*f*) *The Joseph Harvey*, 1 C. Rob. 306; *The Æolus*, L. R. 4 Adm. at p. 32; *Akerblom* v. *Price*, 7 Q. B. D. 129.

(*g*) *The Hebe*, 2 W. Rob. 246.

(*h*) *The Elizabeth*, 8 Jur. 365.

(*i*) Lush. at p. 347; and see *The Princess Alice*, 3 W. Rob. 138.

(*k*) *The Undaunted*, 11 P. D. 46. In *The United Service*, 8 P. D. 56, 9 P. D. 3, the tug-owners contracted themselves out of any liability for negligence or default of themselves or their servants.

(*kk*) *The Liverpool*, (1893) P. 154.

Tugs.

But if, in the discharge of this task, by sudden violence of winds or waves, or other accidents, the ship in tow is placed in danger, and the towing vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services, if the ship be saved, and may claim as a salvor, instead of being restricted to the sum stipulated to be paid for mere towage.(*l*) . . . . The tug is relieved from the performance of her contract by the impossibility of performing it, but if the performance of it be possible, but in the course of it the ship in her charge is exposed, by unavoidable accident, to dangers which require from the tug services of a different class, and bearing a higher rate of payment, it is held to be implied in the contract that she shall be paid at such higher rate. To hold, on the one hand, that a tug, having contracted to tow, is bound, whatever happens after the contract, though not in the contemplation of the parties, and at all hazards to herself, to take the ship to her destination; or, on the other, that the moment the performance of the contract is interrupted, or its completion in the mode originally intended becomes impossible, the tug is relieved from all further duty, and at liberty to abandon the ship in her charge to her fate; would be alike inconsistent with the public interests. . . . . Whether the circumstances in each particular case are sufficient to turn towage into salvage must often be a subject of great doubt, but . . . . if . . . . the danger from which the ship has been rescued is attributable to the fault of the tug—if the tug, whether by wilful misconduct or by negligence, or by the want of that reasonable skill or equipments which are implied in the towage contract, has occasioned or materially contributed to the danger, she can have no claim to salvage.(*m*) She never can be permitted to profit by her own wrong or default."(*n*)

Towage and salvage.

§ 715. Risk to the salvor not being a necessary element of salvage, it follows that a tug engaged under the ordinary contract to tow, may, by the performance of salvage services in saving the ship towed from supervening danger, earn salvage reward, though not herself incurring risk.(*o*)

Even where there has been no change of circumstances during the performance of the towage contract, the tug may nevertheless become entitled to salvage, if, at the time the towage agreement was entered into, there was a concealment, even though unintentionally, of a fact which was material for the consideration

(*l*) *Five Steel Barges*, 15 P. D. 142.

(*m*) *The Robert Dixon*, 4 P. D. 121; 5 P. D. 54.

(*n*) See also *The Annapolis*, Lush. 355; *The Julia*, Lush. 224; *The Saratoga*, Lush. 318; *The Galatea*, Swab. 350; *The White Star*, L. R. 1 Adm. 68; *The J. C. Potter*, L. R. 3 Adm. 292; *The Waverley*, L. R. 3 Adm. 369; *The Westbourne*, 14 P. D. 132; *The Lady Egidia*, Lush. 513; *The Liverpool*, (1893) P. 154.

(*o*) *The Pericles*, B. & L. 80.

Tugs.

of the tug in entering into the agreement, as possibly affecting its execution.(p)

Thus if the ship towed is in a damaged condition, the concealment of the fact by her master may entitle the tug to repudiate the towage agreement and to sue for salvage.(q)

In the absence of any agreement, mere towage reward is confined to those cases where the ship receiving the service is in the condition she would ordinarily be in without having met with any damage or accident.(r) But where the ship towed has received injury or damage, or is disabled or in distress, towage, if it leads to the rescue of the ship from danger, will be remunerated as salvage.(s)

Public officials.

§ 716. If a magistrate or other public officer, acting in his public capacity, should go beyond the limits of his official duty in giving extraordinary assistance, he would be entitled to claim as a salvor. The case would be otherwise if his services amounted only to the discharge of his ordinary duties.(t)

Rival Salvors.

§ 717. Where more than one set of salvors claim remuneration in respect of services rendered in the preservation of a ship or cargo, the question whether both or either of them is entitled to reward, requires consideration.

Salvors going to the assistance of a ship in distress do not, except in the case of a derelict, acquire the sole management of her. They only act under the sufferance and permission of the master.(u) Whilst the master of the ship remains on board and retains the command, he is entitled to the control of the ship and cargo, and to direct the work of the salvors. He may regulate the amount of assistance to be given to his ship, he may reject the help of persons whom he does not think fit to employ, and he may call in the aid of additional salvors, if he think fit, whilst those whom he does employ are bound to obey his orders.(x) Prior salvors, or those whose offers of assistance have been refused, have no right to interfere with the master by attempting to exclude further assistance. Such misconduct diminishes their own title, if any, to salvage.(y) If the master and crew leave the ship for the purpose of obtaining assistance and returning with it,

Whilst master remains in command.

(p) *The Canova*, L. R. 1 Adm. at p. 56; *The Kingalock*, 1 Spinks, 263.

(q) *The Kingalock*, 1 Spinks, 263. And as to effect of agreement, see *post* §§ 732–734.

(r) *The Reward*, 1 W. Rob. 174.

(s) *The Isabella*, 3 Hagg. 427; *The Charles Adolphe*, Sw. 153; *The Ellora*, Lush. 550; *The Batavier*, 1 Sp. 169; *The Jubilee*, 42 L. T. 594; *The Agamemnon*, 48 L. T. 880.

(t) *The Aquila*, 1 C. Rob. at p. 46.

(u) *The Dantzic Packet*, 3 Hagg. 383.

(x) *The Dantzic Packet*, 3 Hagg. 383; *The Champion*, B. & L. 69; *The Glasgow Packet*, 2 W. Rob. 306; Jones on Salvage, p. 55.

(y) *The Dantzic Packet*, 3 Hagg. 383; *The Glory*, 14 Jur. 676.

salvors, who have occupied in the meantime, are bound to submit themselves to the orders of the master when he appears and claims his authority. The master, under such circumstances, is entitled to resume charge of his ship, to refuse to continue to employ them, to employ whom he pleases, and to take what measures he thinks fit for the preservation of ship and cargo.(z)

Whilst master remains in command.

On the other hand, salvors who, with the consent of the master, hold actual possession of a ship, and are competent to fulfil the service which they have undertaken, cannot be dispossessed by other persons strangers to the ship.(a) And if forcibly dispossessed, without the concurrence of the master, the persons so intruding themselves can earn nothing for their own benefit, but every service performed by them will enure to the benefit of the original salvors.(b) But where, from the necessity of the case, or from other circumstances, the interposition of subsequent salvors is proper and justifiable, and is accepted by the master, they will be entitled to their due share of the salvage reward.

Derelict.

Where the ship is derelict.

§ 718. A ship and cargo are "derelict," if they have been abandoned at sea by the master and crew, without hope of recovery. A mere quitting of the ship, for the purpose of procuring assistance from shore, or with an intention of returning again, is not such an abandonment as would constitute the ship and cargo derelict.(c) And when on the alarm attending a collision, the crew of one ship jumps on board the other, such an abandonment for the security of the person does not of itself necessarily constitute the ship a derelict,(d) unless the facts show that they left her without the hope of recovering her.(e) Nor, although a ship or cargo be sunk in the sea, will they become derelict so long as the owner does not give up his intention of resuming possession.(f) But, if the master and crew have once abandoned their ship, without the hope of recovering her, she will still remain a derelict, even although they afterwards return and beg to get on board with the salvors.(g)

A derelict ceases to be derelict when taken possession of by salvors, so that if they leave her temporarily with the intention of returning with further assistance, other salvors taking possession during their absence cannot claim as against a derelict.(h)

(z) *The Champion*, Br. & L. 69.

(a) *The Champion*, B. &. L. 69; *The Glasgow Packet*, 2 W. Rob. 306.

(b) *The Fleece*, 3 W. Rob. 278.

(c) Per Lord Stowell, *The Aquila*, 1 C. Rob. at p. 40; *The Clarisse*, Swab. at p. 130; *The Coromandel*, Swab. 205; *The Sarah Bell*, 4 N. of C. 144; *The Minerva*, 1 Spinks, at p. 273.

(d) *The Fenix*, Swab. 13; *The Cosmopolitan*, 6 N. of C., supp. at p. xxiii.

(e) *The Columbia*, 3 Hagg. 428.

(f) *The Barefoot*, 14 Jur. 841.

(g) *The Berlin*, 3 (Irish) Jur. 34; ii. Pritchard, 1882.

(h) *The Atlas*, Lush. at p. 521.

The rights of the first salvors.

§ 719. When a ship is a derelict, the salvors who are first in possession, if they are capable of saving the property, have a vested interest, and a right of exclusive possession. They are entitled to complete the salvage, and to exclude all others from joining in it.(*i*) And the Court requires those who disturb the possession of the first salvors, to show clearly, either that there was an absolute necessity for their interference, from the incompetency of the first salvors or otherwise, or that their services were accepted and adopted by the first set.(*k*)

When a second set may interfere.

But if the first set of salvors are not able to save the derelict, then a second set will be entitled to interfere and to share in the salvage reward;(*l*) and in some cases, where the assistance of the second salvors was beneficial rather than absolutely necessary, the Court has awarded salvage.(*m*)

If the first salvors, without sufficient reason, reject the services of others offered to them at a moment of great hazard, when the success of the enterprise is uncertain, the Court will award them less salvage than it would otherwise have done.(*n*)

And if the first of two sets of salvors abandon the enterprise without any intention of resuming it, and the second set afterwards enter upon the service and bring it to a successful issue, the second set will be entitled to the whole salvage, and the first set will be entitled to nothing.(*o*) But where the first set merely leave the ship for the purpose of procuring assistance, and without any intention of abandoning the salving enterprise, and another set take the ship in hand and rescue her, salvage may be awarded to the first set for any beneficial services they may have rendered to the ship.(*p*)

The Amount of the Award.

The amount.

§ 720. Salvage is not a payment merely for work and labour estimated on the amount of service rendered. Considerations bearing no the interests of navigation and commerce induce the Court to grant to successful salvage an amount much exceeding a mere remuneration for work and labour, and when salvors act honestly and fairly they will be liberally rewarded without a minute inquiry into the quantum of labour.(*q*)

(*i*) *The Blenden Hall*, 1 Dods. 414; *The Maria*, Edwards, 175; *The Effort*, 3 Hagg. at p. 167; *The Queen Mab*, 3 Hagg. at p. 243; *The Dantzic Packet*, 3 Hagg. at p. 385; *The Champion*, B. & L. 69; *The Kathleen*, 31 L. T. at 210; *The Eugène*, 3 Hagg. at p. 160.

(*k*) *The Maria*, Edwards, 175; *The Blenden Hall*, 1 Dods. at p. 416; *The Eugene*, 3 Hagg. at p. 160; *The Pickwick*, 16 Jur. 669.

(*l*) *The Magdalen*, 31 L. J. Adm. 22; *The Pickwick*, 16 Jur. 669.

(*m*) *The Charlotta*, 2 Hagg. 361; *The Magdalen*, 31 L. J. Adm. 22.

(*n*) *The Glory*, 14 Jur. 676; *The Dosseitei*, 10 Jur. 865.

(*o*) *The India*, 1 W. Rob. 406; *The Cosmopolitan*, 6 Notes of Cas. supp. xvii.

(*p*) *The E. U.*, 1 Spinks, 63; *The Jonge Bastiaan*, 5 C. Rob. 322.

(*q*) *The Hector*, 3 Hagg. 90; *The Clifton*, 3 Hagg. 117; *The Sarah*, 1 C. Rob. 312, n.; *The William Beckford*, 3 C. Rob. 355; *The Industry*, 3 Hagg. 203;

Where no agreement entered into.

Where no agreement was entered into prior to the performance of the salvage services as to the amount to be paid for them, the amount of salvage to be awarded to the salvors is a matter which rests entirely in the discretion of the Court, after a review of all the circumstances of the case.(*r*) The Court of Appeal will not interfere with the decision of the Court below with respect to the amount of salvage to be awarded, unless the judgment is clearly erroneous and greatly in excess or greatly deficient, and the justice of the case has not been attained.(*s*)

Elements to be considered.

In estimating the amount to be paid, the Court will take into consideration the value of the property saved;(*t*) the actual perils from which it has been saved;(*u*) the possibility of assistance from elsewhere;(*x*) the state of the weather at the time the services were rendered;(*y*) the degree of risk and peril incurred by the salvors:(*z*) the degree of labour and skill exerted by them;(*a*) the value of the ship, boats, and other property employed in the salvage service;(*b*) the time occupied by such services;(*c*) the injury and loss, if any, occasioned to the salvors;(*d*) and the fact of human life having been saved.(*e*) Where all these conditions concur, a large and liberal reward is given, not measured merely by the amount of work and labour actually done; and conversely, where none or scarcely any exist, the compensation granted will be little more than mere payment for work and labour. An agreement entitling the salvors to some remuneration, even if not successful, will cause a reduction of the award.(*ee*)

Value salved.

§ 721. The greater the value of the property salved, the greater the reward, other things being equal; but in fixing a proportion of the value, the Court usually gives a smaller proportion where the property is large, and a larger proportion where the value is small; because the award of a small proportion in

The Marquis of Huntly, 3 Hagg. 246; *The Fusilier*, B. & L. at p. 347; *Aitchison* v. *Lohre*, 4 Ap. Ca. at p. 766.

(*r*) *The Salacia*, 2 Hagg. 262; *The Industry*, 3 Hagg. 203; *The Inca*, Sw. 370; *The City of Chester*, 9 P. D. 182.

(*s*) *The Sappho*, L. R. 3 P. C. at p. 695; *Green* v. *Bailey*, 12 Moo. P. C. 346; *The Scindia*, L. R. 1 P. C. 241; *The True Blue*, L. R. 1 P. C. 250; *The Chetah*, L. R. 2 P. C. 205; *The Farnley Hall*, 46 L. T. 216; *The Glenduror*, L. R. 3 P. C. 589; *The Clarisse*, Sw. 129; *The Carrier Dove*, 2 Moo. P. C. N. S. at p. 254; *The Amerique*, L. R. 6 P. C. 468; *The Lancaster*, 9 P. D. 14; *The City of Chester*, 9 P. D. 182; *The Star of Persia*, 57 L. T. 839; *The Thomas Allen*, 12 Ap. Ca. 118; *The Accomac*, (1891) P. 349.

(*t*) *The Blenden Hall*, 1 Dods. 414; *The Hector*, 3 Hagg. 90; *The Ewell Grove*, 3 Hagg. 209; *The Werra*, 12 P. D. 52.

(*u*) *The William Beckford*, 3 C. Rob. 355; *The True Blue*, L. R. 1 P. C. 250; *The Werra*, 12 P. D. 52.

(*x*) *The Werra*, 12 P. D. 52.

(*y*) *The Industry*, 3 Hagg. 203.

(*z*) *The Industry*, 3 Hagg. 203; *The Bartley*, Sw. 198; *The Thomas Fielden*, 32 L. J., Ad. 61; *The Glenduror*, L. R. 3 P. C. 589.

(*a*) *The Clifton*, 3 Hagg. 117; *The Magdalen*, 31 L. J. Ad. 22.

(*b*) *The City of Chester*, 9 P. D. at p. 203; *The Werra*, 12 P. D. 52.

(*c*) *The Industry*, 3 Hagg. 203.

(*d*) *Mudhopper* No. 4, 40 L. T. 462; *The Sunniside*, 8 P. D. 137; *The De Bay*, 8 Ap. Ca. 559; *The City of Chester*, 9 P. D. 182.

(*e*) *The Glenduror*, L. R. 3 P. C. 589.

(*ee*) *The Edenmore*, (1893) P. 79. And see *The Kate B. Jones*, (1892) P. 366.

Where there was no agreement between the salvors and the salved.

cases of small value would not hold out a sufficient encouragement to salvors, whereas in cases of considerable value a smaller proportion would afford no inadequate compensation.(*f*)

The Valuation of the Property.

Mode of estimating value salved.

§ 722. Salvors are, in general, entitled to salvage upon ship, freight, and cargo.(*g*) In ascertaining the value of the property salved, for the purpose of fixing the amount to which the salvors are entitled, the general rule is, that the valuation shall be taken at the port at which the salvage services terminated.(*h*) In estimating the value of recaptured property, the rule is to take the value, not at the time of capture, but at the place of restitution.(*i*)

Ship.

§ 723. In valuing the ship, deductions for expenses falling on the owners are allowed only in the case of such as have been incurred since the commencement of the salvage service, and are consequently beneficial to the salvor as well as to the owner. The amount of a bottomry bond given, or of wages earned, after the service has commenced, may accordingly be deducted,(*k*) but it is otherwise with a bond executed, or wages due, or necessaries supplied before the service.(*l*) Nor can prepaid freight, primage, or insurance be deducted,(*m*) nor the expenses of prosecuting wreckers, who have forcibly dispossessed the salvors.(*n*) Expenses incurred and paid by the salvors, such as pumping and watching, will be allowed them by the Court independently of salvage, and will be deducted from the value of the salved property in assessing the amount of the reward.(*o*)

Freight.

§ 724. In valuing the freight for the purposes of salvage, where the services of the salvors terminate before the completion of the voyage, the Court treats the freight as divisible and as though a *pro ratâ* freight were payable at the intermediate port, and reckons the value of the freight salved according to the proportion of the voyage which has been completed, and the other equities of the case.(*p*) The shipowner, however, will be allowed to deduct expenses incurred in the completion of his contract of carriage, necessary to entitle him to earn any freight at all.(*q*)

Cargo.

§ 725. In valuing the cargo, all necessary expenses attendant on the unshipping and storing of the goods, their valuation and

(*f*) Per Lord Stowell, *The Blenden Hall*, 1 Dods. at p. 421; *The Waterloo*, 2 Dods at p. 442.

(*g*) *The Fleece*, 3 W. Rob. at p. 282.

(*h*) *The George Dean*, Swab. 290; *The Endeavour*, 6 Moo. P. C. 334; *The Norma*, Lush. 124; *The Stella*, L. R. 1 Adm. 340.

(*i*) *The Progress*, Edward, at p. 222.

(*k*) *The Selina*, 2 N. of C. 16.

(*l*) *The Hebe*, 7 N. of C. supp. i.; *The Sabina*, 7 Jur. 182.

(*m*) *The Charlotte Wylie*, 2 W. Rob. 495.

(*n*) *The Fleece*, 3 W. Rob. at p. 281.

(*o*) *Le Jonet*, L. R. 3 Ad. at p. 559.

(*p*) *The Norma*, Lush. 124.

(*q*) *The James Armstrong*, L. R. 4 Ad. 380.

sale, must be deducted, as well as the freight, and customary charges such as brokerage, weighing, and commission.(*r*)

Appraisement.

§ 726. As a general rule, the owners of the salved property are called upon to state its value, and if the salvors are dissatisfied with the estimate, they may obtain a commission of appraisement. If it be thereby proved that the true value has not been stated, the salvors are entitled to the costs of the appraisement.(*s*)

The Merchant Shipping Act Amendment Act, 1862,(*t*) provides as follows:

Receiver of wreck may appoint a valuer in salvage cases.

50. Whenever any salvage question arises, the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Additional Compensation in Special Cases.

Duration of service.

§ 727. The value of the service rendered is not measured by the length of its duration, for it is of great importance to property salved that the service should be performed with celerity.(*u*) Accordingly, if the salvage services are well performed, the Court will treat the shortness of the duration of such services as an element of merit in estimating the amount to be awarded.(*x*)

Damage or loss to salving ship.

§ 728. Where the salving ship sustains damage or loss by rendering salvage service, the Court generally awards to the owner, in addition to the salvage properly so called, a reasonable compensation for such damage or loss, and for the loss of the ship's services whilst undergoing repairs.(*y*) And on the same principle the Court will take into consideration the fact of the salvors incurring risks to their own interests, or responsibilities with respect to their contracts with third parties. These rules have been acted upon in the following cases:

Where a whaler was detained and consequently incurred risk, damage, and expense by the salvage services rendered by her;(*z*)

Where the salving vessel was engaged in the sealing trade, and lost the sealing season;(*a*)

Where a steam vessel carrying mails and passengers delayed or

(*r*) *The Watt*, 2 W. Rob. 70; *The Hebe*, 7 N. of C. supp. i; *The Peace*, Swab. 115.

(*s*) *The Paul*, L. R. 1 Adm. 57. But unless there be a great disparity between the estimated and the appraised value the salvors will be liable for costs; *The Persian*, 1 W. Rob. 327.

(*t*) 25 & 26 Vict. c. 63.

(*u*) *The Otto Hermann*, 33 L. J. Adm. 189.

(*x*) *The Syrian*, 14 L. T. N. S. 833.

(*y*) *The Spirit of the Age*, Swab. 286; *The Saratoga*, Lush. 318; *Mudhopper No.* 4, 40 L. T. 462.

(*z*) *The Jane*, 2 Hagg. 338.

(*a*) *The Salacia*, 2 Hagg. 262.

deviated from her usual employment to perform salvage service and suffered loss or risk from the delay so occasioned;(*b*)

Where the cargo of the salving ship was injured by the delay occasioned by the performance of salvage services;(*c*)

Where there was no agreement between the salvors and the salved.

Where the salving ship leaves a lucrative employment to render salvage services in cases of imminent (*d*) danger;(*e*)

Where the salving ship runs the risk of forfeiting her policy of insurance, or of becoming liable to the owners of the cargo by reason of the delay or deviation.(*f*)

Where a ship is injured or lost whilst engaged in salvage service, the presumption is that the injury or loss was occasioned by the necessities of the service and not by the default of the salvors. The burden of proving that such loss was caused by the salvors' own acts lies upon those making such allegations.(*g*)

Value of salving ship.

§ 729. The value of the salvors' property at risk also requires consideration, though it will not greatly increase the amount of the reward.(*h*) A larger amount is usually awarded to steamers than to other vessels, because they possess a greater power of rendering effective and rapid service, and with greater safety to the ship in danger.(*i*)

Risk to life.

§ 730. However great may be the danger to property, the salvage service, if unattended by risk to human life, receives much less reward than where life has been put in peril, whether on board the salved or salving ship. And if life is saved the salvage reward is considerably increased.(*k*) Life salvage, as we have already seen,(*l*) has precedence over all other salvage claims.

Life salvage.

Derelicts.

§ 731. In cases of derelicts, it is usual to give a larger proportion of the value salved than in other cases, on account of the great danger to the property derelict.(*m*) But the amount awarded rests entirely in the discretion of the Court, and is regulated by the circumstances of each case.(*n*) In such cases, as

(*b*) *The Martin Luther*, Swab. 287.

(*c*) *The Houthandel*, 1 Spinks, 25.

(*d*) *The Nicolai Heinrich*, 17 Jur. 329.

(*e*) *The Louisa*, 3 W. Rob. 99.

(*f*) *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; *The Edenmore*, (1893) P. 79. In *The Aletheia*, 13 W. R. 279, the Court recognised the right of the master to an increased reward where he had assumed the responsibility of deviation; *The Farnley Hall*, 46 L. T. 216. There is no risk incurred by a deviation for the purpose of saving life; but where the deviation is to save property the policy will be avoided unless it contains a clause authorizing such a deviation. See *Scaramanga* v. *Stamp*, 5 C. P. D. 295; *ante* § 214.

(*g*) *The Thomas Blyth*, Lush. 16.

(*h*) *The City of Chester*, 9 P. D. at p. 203; *The Werra*, 12 P. D. 52.

(*i*) *The Spirit of the Age*, Swab. 286; *The Martin Luther*, Swab. 287; *The Alfen*, Swab. 189; *The Kingalock*, 1 Spinks, at p. 267; *The London Merchant*, 3 Hagg. at p. 401.

(*k*) *The Thomas Fielden*, 32 L. J. Ad. 61; *The Ardincaple*, 3 Hagg. 151; *The Clarisse*, Sw. 129; *The Bartley*, Sw. 198; *The Eastern Monarch*, Lush. 81; *The Fusilier*, B. & L. 341; *The Anna Helena*, 49 L. T. 204.

(*l*) *Ante* § 690.

(*m*) *The Aquila*, 1 C. Rob. 37; *The Sarah Bell*, 4 N. of C. at p. 147; *The Florence*, 16 Jur. at p. 578; *The True Blue*, L. R. 1 P. C. 250.

(*n*) *The Salacia*, 2 Hagg. 262; *The Aquila*, 1 C. Rob. 37; *The Florence*, 16 Jur. 578; *The Effort*, 3 Hagg. 165; *The Minerva*, 1 Spinks, 271; *The True Blue*, L. R. 1 P. C. 250; *The Anna Helena*, 49 L. T. 204.

much as one-third or one-half,(o) and in exceptional instances even more,(p) have been awarded to salvors. And, in some cases, where the property was of small value and no owner appeared, the proceeds of the whole have been divided between them.(q)

Where there was no agreement between the salvors and the salved.

In non-derelict cases, a moiety of the property saved with costs is the maximum remuneration that will be allowed to salvors,(r) and even in derelict cases the Court will give more than half only under circumstances of an extraordinary nature;(s) such as where the ship salved is a Queen's ship; or where the property salved is small; or where no private owner appears and sets up a claim.(t)

Salvage Agreements.

Where agreement entered into between salvors and salved.

§ 732. It is perfectly competent for salvors, instead of leaving the amount of their remuneration to be determined by the Court, to agree with the master of the ship in distress to render the required assistance for a specified sum; provided that there be a clear understanding of all material facts which affect the salvage service; that the agreement be made with fairness and impartiality to all concerned; and that the parties to it are competent to form a judgment as to the obligations to which they are binding themselves.(u) If these conditions are fulfilled, the parties will be bound by their contract, and the Court will not allow such an agreement to be set aside, merely because the execution of it has turned out more difficult or more easy of performance than was anticipated at the time of making the contract.(x)

Where, however, the services rendered do not fall within the scope of the agreement, or are not such as could be reasonably supposed to have been contemplated by the parties at the time of making the contract, the Court will not hold the salvors limited to the agreed amount.(y)

How far masters can bind owners.

§ 733. The masters of the salving ship and of the vessel in distress are competent to bind their respective owners by a sal-

(o) *The Britannia*, 3 Hagg. 153; *L'Espérance*, 1 Dods. 46; *The Frances Mary*, 2 Hagg. 89; *The Reliance*, 2 Hagg. 90 n.; *The Elliotta*, 2 Dods. 75; *The Watt*, 2 W. Rob. 70; *The Hebe*, 4 P. D. 217; *The Craigs*, 5 P. D. 186; *The Livietta*, 8 P. D. 24.

(p) *The Jubilee*, 3 Hagg. 43 n.; *The Jonge Bastiaan*, 5 C. Rob. 322; *The Rasche*, L. R. 4 Adm. 127.

(q) *The William Hamilton*, 3 Hagg. 168; *The Boiler ex Elephant*, 64 L. T. 543.

(r) *The Inca*, Swab. 370; 12 Moo. P. C. 189; *The City of Chester*, 9 P. D. at p. 186. See, however, *The Erato*, 13 P. D. 163.

(s) *The Reliance*, 2 Hagg. 90 n.

(t) *The Britannia*, 3 Hagg. 153; *L'Espérance*, 1 Dods. at p. 49; *The Cosmopolitan*, 6 Notes of Cas. supp. at p. xxxi.; *The Ewell Grove*, 3 Hagg. at p. 221.

(u) *The True Blue*, 2 W. Rob. at p. 179; *The Waverley*, L. R. 3 Adm. 369; *The Cargo ex Woosung*, 1 P. D. 260; *The Medina*, 1 P. D. 272; 2 P. D. 5.

(x) *The Waverley*, L. R. 3 Ad. 369; *The True Blue*, 2 W. Rob. 176; *The Jonge Andries*, Sw. 226, 303; *The Firefly*, Sw. 240; *The Cato*, 35 L. J. Ad. 116; *The Helen* and *George*, Sw. 368.

(y) *The Westbourne*, 14 P. D. 132. As to when an agreement to tow becomes superseded by a right to salvage, see *ante* § 714.

Where there was an agreement between the salvors and the salved.

vage agreement.(z) It has, however, been doubted by Dr. Lushington whether the master is an agent to bind the owner for such a purpose, when the owner is at hand and gives him no authority.(a) And the action of the master, in entering into a salvage agreement for a fixed sum, creates a personal liability on the part of the owner to pay the whole amount agreed upon, without any deduction in respect of the salvage of the cargo.(b) But this liability does not arise where the agreement is merely a general one to salve, without any stipulation as to the amount of the remuneration.(c)

Neither shipowner nor master has authority to bind the cargo owners by any agreement.(d)

How far master or owner can bind crew.

The master of the salving ship is an agent for the crew to bind them by an agreement made before the salvage services are rendered.(e) But after the performance of the services it would appear that he has no such authority.(f) And the position of the owner is the same.(g)

An agreement with part of the crew of the salving ship, or with one of several sets of salvors, is not binding on the others who have neither concurred in it at the time nor ratified it subsequently.(h)

Burden of proof.

§ 734. The agreement need not be in writing,(i) but it must be strictly proved by those who seek to set it up.(k) When once proved, it is *primâ facie* binding, and the burden of proof is transferred to those who dispute the validity of the contract.(l)

The Court will not uphold the agreement if it has been obtained by fraud (m) or compulsion,(n) or if the master, however, unintentionally, has misrepresented or concealed any fact material for the consideration of the salvors in entering into the contract.(o)

When Court will not enforce agreement.

Nor will the agreement be enforced if it be clearly unjust or inequitable towards either party,(p) nor if the master have im-

(z) *The Africa*, 1 Sp. 299; *The Waverley*, L. R. 3 Ad. at p. 378.

(a) *The Elise*, Sw. at p. 440.

(b) *The Cumbrian*, 57 L. T. 205; *The Prinz Heinrich*, 13 P. D. 31.

(c) *The Raisby*, 10 P. D. 114.

(d) *Anderson* v. *Ocean S.S. Co.*, 10 Ap. Ca. at p. 117. As to when the master becomes agent for the cargo owners, see §§ 238–242.

(e) *The Elise*, Sw. at p. 440; *The McGregor Laird*, W. N., 1867, 308; *The Nasmyth*, 10 P. D. 41.

(f) *The Britain*, 1 W. Rob. 40; *The Sarah Jane*, 2 W. Rob. 110. And see Kennedy on Salvage, pp. 222–224.

(g) In *The William Lushington*, 7 N. of C. 361, it was held by Dr. Lushington that an agreement between the owners of the salving ship and the salved ship, did not bind the master and crew of the salving ship, who were not cognisant of the agreement.

(h) *The Charlotte*, 3 W. Rob. at p. 74.

(i) *The Firefly*, Sw. 240.

(k) *The Graces*, 2 W. Rob. at p. 297; *The Resultatet*, 17 Jur. at p. 354.

(l) *The Helen* and *George*, Sw. 368; *The Betsey*, 2 W. Rob. at pp. 170–172.

(m) *The Crus V.*, Lush. 583; *The Generous*, L. R. 2 Ad. 57.

(n) *The Helen* and *George*, Sw. 368; *The Medina*, 1 P. D. 272; 2 P. D. 5; *The Mark Lane*, 15 P. D. 135.

(o) *The Jonge Andries*, Sw. at p. 227; *The Kingalock*, 1 Spinks, at p. 265; *The Henry*, 15 Jur. 183; *The Canova*, L. R. 1 Adm. at p. 56.

(p) *The Phantom*, L. R. 1 Adm. 58; *The Enchantress*, Lush. 93; *The Silver Bullion*, 2 Spinks, 70; *The Helen* and

properly or recklessly contracted to pay the salvors a grossly exorbitant demand,(q) nor if the agreement be for the salvage of the ship alone, irrespective of the cargo on board,(r) nor if it have been cancelled by the mutual consent of the parties.(s)

The Apportionment of the Salvage.

Apportionment.

§ 735. The Court of Admiralty has always possessed the power to apportion salvage. And with respect to cases falling within the Merchant Shipping Act, 1854,(t) the following provisions apply :

Powers for Courts having Admiralty jurisdiction to apportion salvage.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just,(u) and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into court, to be there dealt with as the court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit.

This section imposes a duty upon the Admiralty Court, on application made to it, to decree an equitable apportionment of salvage, unless barred by either an equitable agreement between the parties, or an equitable tender.(x)

The application for apportionment of salvage should be made at the time of, or within a reasonable time after, the salvage has been decreed ; but where the applicant is a seaman, seeking apportionment as against the owner of his ship, the Court is less strict as to the time within which it will allow the application to be made.(y)

County courts, having Admiralty jurisdiction, may entertain suits for the distribution of salvage, where the value of the property salved does not exceed £1000, or where the amount claimed does not exceed £300, and in cases where the value or claim exceeds these amounts, and the parties by memorandum agree that the Court shall have jurisdiction.(z)

§ 736. The proportions in which salvage is divided between

George, Sw. 368 ; *Akerblom* v. *Price*, 7 Q. B. D. at p. 132 ; *The Cargo ex Woosung*, 1 P. D. at pp. 265, 266 ; *The Medina*, 1 P. D. 272 ; 2 P. D. 5 ; *The Silesia*, 5 P. D. 177 ; *The Mark Lane*, 15 P. D. 135 ; *The Rialto*, (1891) P. 175.

(q) *The Theodore*, Sw. 351.

(r) *The Westminster*, 1 W. Rob. at p. 235. In such a case the Court will refuse to award any salvage. *Ibid.*

(s) *The Samuel*, 15 Jur. 407 ; *The Africa*, 1 Spinks, 299 ; *The Betsey*, 2 W. Rob. at p. 172 ; *The Repulse*, 2 W. Rob. at p. 397.

(t) 17 & 18 Vict. c. 104.

(u) No costs of apportionment will be given after a tender by the salved ship which has been upheld by the Court ; *The Lee*, 60 L. T. 939.

(x) *The Enchantress*, Lush. 93.

(y) *The Spirit of the Age*, Swab. at p. 287.

(z) 31 & 32 Vict. c. 71, s. 3 ; 25 & 26 Vict. c. 63, s. 49 ; *The Glannibanta*, 2 P. D. 45. See § 749 *post*.

What proportion awarded to owners of salving ships.

the owners and the crew of the salving vessel is a matter entirely for the discretion of the Court to which the application for apportionment is made, and must depend upon the peculiar circumstances of each individual case.(*a*)

As has been already seen,(*b*) the proportion of the reward usually awarded to the owners has greatly increased with the augmented power and cost of the steamers which are the most frequent agents of the salvage service. The Court is also in this respect guided by considerations of public policy, as owners of steamers might, if not liberally rewarded, discourage the masters of their vessels from engaging in any salvage where human life was not in peril.(*c*) In such cases, where there is no extraordinary difficulty or risk to the actual salvors the usual practice now is to allot three-fourths of the reward to the owners.(*d*) And where the salving vessel has incurred special risks, or sustained actual damage, additional compensation to meet these claims will be awarded to the owners.(*e*) But where the salving ship herself is not the chief agent in performing the service, the amount allotted to the owners will be diminished proportionately to the circumstances of the case.(*f*)

The owners of fishing vessels,(*g*) and of steamers specially built for and devoted to salvage services,(*h*) are entitled to liberal remuneration.

Master's share.

§ 737. In ordinary circumstances the amount awarded to the master is proportioned to the responsibility he undertakes in suspending his voyage, and risking the property of his owner. As this responsibility rests on him alone, in addition to his share of the actual work, he generally receives a considerably larger proportion of the salvage than any of the crew.(*i*) And in special cases, such as that of a steamer carrying mails and passengers, where the responsibility incurred by the employment of his ship in rendering salvage services is peculiarly great, his reward will be proportionately higher.(*j*)

Officers and seamen.

As regards the officers and seamen, their share of the reward is usually apportioned according to their rating.(*k*) But cases of peculiar merit, involving special responsibility,(*l*) greater risk,(*m*)

(*a*) *The Nicolina*, 2 W. Rob. 175.
(*b*) *Ante* § 704.
(*c*) *The Martin Luther*, Sw. at p. 290.
(*d*) *The Rialto*, (1891) P. 175.
(*e*) See *ante* § 728.
(*f*) *The Palmyra*, 25 L. T. 884; *The Skibladner*, 3 P. D. 24.
(*g*) *The Louisa*, 2 W. Rob. at p. 26; *The Louisa*, (No. 2) 3 W. Rob. at p. 100.
(*h*) *The Mary Anne*, 11 L. T. 85.
(*i*) *The Earl Grey*, 3 Hagg. 363; *The Nicolina*, 2 W. Rob. 175; *The Perla*, Sw. 230; *H.M.S. Himalaya*, Sw. 515.
(*j*) *The Martin Luther*, Sw. 287.
(*k*) *The Earl Grey*, 3 Hagg. 363; *The Columbia*, *ibid.* 428; *The Hope*, *ibid.* 423; *The Pride of Canada*, Br. & L. 208; *The Perla*, Swab. 230. In *The Spree*, (1893) P. 147, the non-navigating members of the crew were held entitled only to a half share each.
(*l*) *The Nicolina*, 2 W. Rob. 175; *The Golondrina*, L. R. 1 Ad. 334; *The Skibladnev*, 3 P. D. 24.
(*m*) *The St. Nicholas*, Lush. 29; *The Rasche*, L. R. 4 Ad. 127; *The Cleopatra*, 3 P. D. 145; *The Craigs*, 5 P. D. 186; *The Killeena*, 6 P. D. 193.

or more arduous services,(*n*) will always be recognised by the Court, and appropriately rewarded. A smaller share is generally allotted to apprentices than to able seamen.(*o*)

What proportion is awarded to master, seamen, and apprentices.

§ 738. Persons assisting in the salvage work are rewarded according to the assistance they render. Passengers, therefore, if entitled to salvage, will be rewarded according to the circumstances of the case, and the value of their services.(*p*) And where the manager of a steamship company superintended the rendering of salvage services by a steamer belonging to the company, he was allotted a larger share of the salvage than any of the others engaged in the service.(*q*)

Passengers.

Manager of SS. company.

§ 739. Where more than one set of salvors is held entitled to participate (*r*) in the salvage awarded, the Court will apportion the reward among them according to their respective services. The larger share will be given to those who have rendered the most effectual help, or who have bestowed the greatest labour, or who have incurred the greatest risk.(*s*)

Where more than one set of salvors.

If there are several sets of salvors, acting independently of each other, the misconduct of one set will not affect the claim of another to salvage, unless the latter are in some way privy to such misconduct.(*t*)

§ 740. Salvage payable to officers and seamen of the Royal Navy or coastguard is generally apportioned by the authorities according to rules laid down for distribution in the services.(*u*)

Royal Navy and coastguard.

§ 741. Agreements between the various salvors for the apportionment among themselves of the amount awarded, are governed by the same considerations that apply to agreements between salvors and salved, determining the amount of the salvage.(*x*) Such an agreement, therefore, need not be in writing, but must be strictly proved, and will be upheld by the Court only so far as it is neither inequitable nor against public policy.(*y*)

Agreements for apportionment.

Thus, an agreement between the salvors and the agent of the

(*n*) *The Caroline*, 2 W. Rob. 124; *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454.

(*o*) *The Hope*, 3 Hagg. at p. 425; *The Two Friends*, 2 W. Rob. at p. 353; *The Columbine*, 2 W. Rob. 186. But see *The Rasche*, L. R. 4 Ad. 127.

(*p*) *The Perla*, Swab. 230; *The Salacia*, 2 Hagg. 262; *The Hope*, 3 Hagg. 423.

(*q*) *The Pentucket*, Lush. 505.

(*r*) As to when they are so entitled, see *ante* § 717.

(*s*) For examples of apportionment among several sets of salvors rendering services varying in degree, see *The Albion*, 3 Hagg. 254; *The Charlotta*, 2 Hagg. 361: *The Swan*, 1 W. Rob. 68; *The Queen Mab*, 3 Hagg. 242; *The Maria*, Edwards, 175; *The Genessee*, 12 Jur. 401; *The Jonge Bastiaan*, 5 C. Rob. 322; *The Santipore*, 1 Spinks, 231; *The Pride of Canada*, B. & L. 208; *The Eastern Monarch*, Lush. 81; *The Undaunted*, Lush. 90; *The Enchantress*, Lush. 93; *The Fusilier*, B. & L. 341; *The Florence*, 16 Jur. 572; *The Charles Adolphe*, Sw. 153; *The Pickwick*, 16 Jur. 669; *The Killeena*, 6 P. D. 193; *The Livietta*, 8 P. D. 24.

(*t*) *The Neptune*, 1 W. Rob. 297; *The Scindia*, 2 M. L. C. 232.

(*u*) *The Mary Ann*, 1 Hagg. 158; *H.M.S. Thetis*, 3 Hagg. 14.

(*x*) See *ante* § 732-734.

(*y*) *The Beulah*, 2 N. of C. at p. 64; *The Louisa*, 2 W. Rob. 22; *The Enchantress*, Lush. 93; *The James Armstrong*, 3 Asp. 46; *The Mary Anne*, 11 L. T. 85.

salving ship, to leave the apportionment to his determination, has been set aside as inequitable and void.(z)

Agreement by seaman to abandon salvage void.

Every stipulation by which any seaman consents to abandon any right which he may have or obtain in the nature of salvage, is, by statute,(a) wholly inoperative. But this enactment does not apply to the case of any stipulation made by the seamen belonging to any ship, which, according to the terms of the agreement,(b) is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services rendered by such ship to any other ship.(c) And no assignment or sale of salvage made prior to the accruing thereof, binds the party making it, nor is any power of attorney, or authority for the receipt of such salvage irrevocable.(d)

Customary agreements.

Local or customary agreements, sought to be implied from the settled usage of a particular locality, or a particular occupation, will, if equitable, be favourably considered by the Court.(e)

If any of the salvors dies before the apportionment takes place, the Court will direct their shares to be paid to their personal representatives.(f)

Contribution.

General rule.

§ 742. Ship, freight, and cargo must each pay their own share of the salvage awarded, in proportion to their respective values.(g) And except, as has been already seen,(h) in the case where the master of the salved ship enters into an agreement with the salvors for a fixed sum, none of the salved interests can be made liable for any portion of the salvage beyond its own proper share.(i) But if the salvage services have been rendered necessary by the default of the shipowner,(k) or have been of no benefit to the cargo,(l) the owners of the latter will be entitled to recover from the shipowner the amount of their contribution in respect of salvage of cargo.

The Court will not decree different rates of salvage for the different parts of the cargo, nor will it make any distinction be-

(z) *The Enchantress*, Lush. 93.

(a) 17 & 18 Vict. c. 104, s. 182. See *The Rosario*, 2 P. D. 41; *The Afrika*, 5 P. D. 192; *The Wilhelm Tell*, (1892) P. 337. *Ante* § 494.

(b) Neither the agreement as to the employment of the ship, nor the stipulation as to the waiver of any claim to salvage, need be in writing; *The Pride of Canada*, B. & L. 208.

(c) 25 & 26 Vict. c. 63, s. 18; *The Ganges*, L. R. 2 Ad. 370.

(d) 17 & 18 Vict. c. 104, s. 233.

(e) *The Enchantress*, Lush. 93; *The Sarah*, 3 P. D. 39; *The John*, Pritch. Adm. Dig. 3rd ed. vol. ii. p. 1890.

(f) *The Marquis of Huntly*, 3 Hagg. 246; *The Anna Helena*, 49 L. T. 204.

(g) *The Emma*, 2 W. Rob. 315; *The Fleece*, 3 W. Rob. at p. 282; *The Peace*, Sw. 115; *The Pyrennee*, B. & L. 189. As to how the values are calculated, see *ante* §§ 722–726.

(h) *Ante* § 733.

(i) *The Mary Pleasants*, Sw. 224; *The Pyrennee*, B. & L. 189; *The Raisby*, 10 P. D. 114.

(k) *The Ettrick*, 6 P. D. 127; *The Princess Royal*, L. R. 5 Ad. 41. Kennedy on Salvage, pp. 183, 184.

(l) *Cox* v. *May*, 4 M. & S. 152.

tween ship and cargo, on the ground that the services rendered were of greater importance to the one than the other.(*m*)

In what proportions ship, freight, and cargo contribute.

Life salvage is payable by ship, freight, and cargo rateably, so far as they are preserved.(*n*)

Life salvage.

Where the shipowner pays the whole salvage in order to obtain the release of the property, he has a lien on the cargo for the amount of its contribution.(*o*)

Forfeiture of the Reward.

General rule.

§ 743. The salvage reward may be wholly forfeited (*p*) by gross or wilful misconduct on the part of the salvors, or partially (*q*) by a less degree of misconduct or negligence. Such misconduct must be connected with the salvage service,(*r*) and must be conclusively proved by those who allege it.(*s*)

Wilful misconduct.

§ 744. The reward for salvage services, however valuable,(*t*) may be wholly "forfeited by wilful misconduct, bad faith, an intention not to do the whole of the duty, or an intention to protract that duty for the purpose of piracy."(*u*) The law requires the strictest good faith on the part of salvors. If they are guilty of fraud against the master, owners, or underwriters, or of collusion with the master to defraud the owners or underwriters, they will forfeit the whole of the salvage.(*x*) Accordingly, plunder of the salved cargo,(*y*) or improper dealing with the property preserved, whether at sea or in port,(*z*) will work a total forfeiture of salvage.(*a*)

Fraud.

The following cases of misconduct have been visited with an entire forfeiture of salvage:

Wilful misconduct causing entire forfeiture.

Where the salvors resisted the employment of a steamer by the master of the ship in distress, and created a riot and disturbance;(*b*)

Where the salvors improperly interfered and resisted the authority of the owners of the ship in distress;(*c*)

(*m*) *The Vesta*, 2 Hagg. 189; *The Emma*, 2 W. Rob. 315; *The Jonge Bastiaan*, 5 C. Rob. 322; *The Longford*, 6 P. D. 60.

(*n*) *The Fusilier*, B. & L. 341; *Cargo ex Schiller*, 1 P. D. 473; 2 P. D. 145; *Cargo ex Sarpedon*, 3 P. D. 28.

(*o*) *Briggs* v. *The Merchants, &c.*, 13 Q. B. 167; *The Prinz Heinrich*, 13 P. D. at p. 34.

(*p*) *The Lady Worsley*, 2 Sp. 253; *The Duke of Manchester*, 2 W. Rob. 470; 6 Moo. P. C. 90; *The Atlas*, Lush. 518.

(*q*) *The Dantzic Packet*, 3 Hagg. 383; *The Dosseitei*, 10 Jur. 865; *The Glory*, 14 Jur. 676.

(*r*) *The Fielden*, 11 W. R. 156.

(*s*) *The Charles Adolphe*, Sw. 153; *The Atlas*, Lush. at p. 528.

(*t*) *The Lady Worsley*, 2 Sp. at p. 256.

(*u*) Per Dr. Lushington, *The Magdalen*, 31 L. J. Ad. 22.

(*x*) Marvin on Wreck and Salvage, pp. 229-231. And see *The Westminster*, 1 W. Rob. at p. 235.

(*y*) *The Florence*, 16 Jur. 572.

(*z*) *The Lady Worsley*, 2 Sp. 253; *The Boston* (American), 1 Summ. 328.

(*a*) But during a salvage service the salvors have a right to an adequate maintenance from the ship's stores, and even if there be some waste the Court will not look closely into it; *The Houthandel*, 1 Sp. at p. 29.

(*b*) *The Martha*, Swab. 489.

(*c*) *The Barefoot*, 14 Jur. 841; *The Atlas*, Lush. 518.

Wilful misconduct causing entire forfeiture.

Where the salvors having taken possession of the ship in peril during the temporary absence of the master and crew, resisted his authority, and refused to allow him to return on board ;(*d*)

Where the salvors persisted in trying to unload into their own boats the cargo of a ship in distress, after men had been put on board by the receiver of wreck ;(*e*)

Where a ship got upon the sands and was assisted off by a steamer and then got aground, owing to the culpable negligence of the steamer ;(*f*)

And by statute,(*g*) where any person, not being the owner, finds or takes possession of any wreck, and does not, as soon as possible, deliver the same to the receiver of wreck, he forfeits all claim to salvage.(*h*)

Negligence and unskilfulness.

§ 745. It is the duty of those who undertake to perform a salvage service, to exercise at least ordinary skill and prudence, according to their condition and capacity, in the execution of the work which they have taken upon themselves to perform.(*i*)

The degree of ordinary skill and prudence that will be expected from salvors has been thus described : "When persons offer their services to vessels in distress and there are no other individuals on the spot capable of rendering more efficient assistance, the Court must look with considerable indulgence on their efforts ; because, being the only aid that can be procured, and offered in a state of great exigency, every allowance must be made if they are not possessed of adequate knowledge to perform the duty they have undertaken. But different considerations will apply to the conduct of individuals, who assume the character of salvors, when there are other persons competent to discharge those duties."(*k*)

"Where success is finally obtained, no mere mistake or error of judgment in the manner of procuring it, no misconduct short of that which is wilful and may be considered criminal, and that proved beyond a reasonable doubt by the owners resisting the claim, will work an entire forfeiture of the salvage. Mistake or misconduct, other than criminal, which diminishes the value of the property salved, or occasions expense to the owners, are properly considered in the amount of compensation to be awarded."(*l*)

Even where essential services have been rendered, if the

(*d*) *The Capella*, (1892) P. 70 ; *The Yan-Yean*, 8 P. D. 147.

(*e*) *The Wear Packet*, 2 Spinks, 256.

(*f*) *The Duke of Manchester*, 2 W. Rob. 470 ; 6 Moo. P. C. 90.

(*g*) 17 & 18 Vict. c. 104, s. 450; see *post* § 754.

(*h*) But this section does not apply where the finder believes himself to be the owner of the wreck ; *The Liffey*, 58 L. T. 351. And see *The Zeta*, L. R. 4 Ad. 460.

(*i*) *The Neptune*, 1 W. Rob. at p. 300 ; *The Cape Packet*, 3 W. Rob. at p. 125 ; *The Lockwoods*, 9 Jur. 1017 ; *The Magdalen*, 31 L. J. Adm. 22 ; *The Houthandel*, 1 Spinks, at p. 27.

(*k*) Per Dr. Lushington, *The Dygden*, 1 N. of C. 115.

(*l*) *The Atlas*, Lush. at p. 528; *The Dosseitei*, 10 Jur. 865; *The Glory*, 14 Jur. 676 ; *The Agamemnon*, 48 L. T. 880 ; *The George Gordon*, 9 P. D. 46; *The Pinnas*, 59 L. T. 526.

property saved sustains any injury in consequence of the subsequent negligence or misconduct of the salvors, the Court will diminish the amount of their remuneration. The extent of this diminution may be proportioned, not to the amount of loss or injury, but to the degree of negligence or misconduct.(*m*) And salvors, whose conduct has been innocent, may suffer by the misconduct or unskilfulness of an agent, who has been properly employed by them to complete a service which they had commenced, if thereby loss or expense has been occasioned to the owners of the property salved.(*n*)

Negligence and unskilfulness.

§ 746. The following cases of misconduct have been visited with a partial forfeiture of salvage :

Causing partial forfeiture.

Where sailors, who had rendered material service, resisted further assistance, although the master deemed it necessary, and attempted against his wishes to exclude subsequent salvors ;(*o*)

Where salvors being unable to place a ship in security themselves, refused assistance and left her exposed to risk, while they proceeded for ropes and spars ;(*p*)

Where salvors misconducted themselves in retaining possession and forcibly continuing their services after they had been discharged by the owners.(*q*)

Where the salvors were guilty of violent and overbearing conduct.(*r*)

And even services of the highest class may be lessened by a subsequent demand of an exorbitant reward.(*s*)

The Salvors' Remedies for Recovering Payment.

§ 747. Salvors have a maritime lien on the property salved, or in other words, a right to realise the amount of their remuneration out of the proceeds of the salvage.(*t*)

Their maritime lien.

This right is enforced, as in the case of damage,(*u*) by arresting the ship in an action *in rem.*(*w*) And where property,(*x*) or some interest in property,(*y*) has been saved, or the services have been rendered under special agreement,(*z*) the salvors have also a

(*m*) *The Cape Packet*, 3 W. Rob. 125 ; *The Magdalen*, 31 L. J. Adm. 22 ; *The Dygden*, 1 N. of C. 115 ; *The Duke of Manchester*, 2 W. Rob. at p. 477 ; *The Perla*, Sw. 230 ; *The Rosalie*, 1 Sp. 188 ; but see *The C. S. Butler*, L. R. 4 Ad. 178 ; *The Dwina*, (1892) P. 58.

(*n*) *The Atlas*, Lush. 518.

(*o*) *The Dantzic Packet*, 3 Hagg. 383.

(*p*) *The Dosseitei*, 10 Jur. 865.

(*q*) *The Glasgow Packet*, 2 W. Rob. 306.

(*r*) *The Marie*, 7 P. D. 203.

(*s*) *The John and Thomas*, 1 Hagg. 157 n.

(*t*) *The Dowthorpe*, 2 W. Rob. at p. 79 ; *The Nymph*, Swab. 86 ; *The Royal Arch*, Swab. at p. 284 ; *The Gustaf*, Lush. at p. 508.

(*u*) *Ante* § 638.

(*w*) But a national ship, whether British or foreign, her cargo and stores cannot be arrested. *The Prins Frederik*, 2 Dods. 451 ; *The Constitution*, 4 P. D. 39 ; *The Parlement Belge*, 5 P. D. 197.

(*x*) *The Cargo ex Sarpedon*, 3 P. D. 28 ; *The Renpor*, 8 P. D. 115.

(*y*) *Five Steel Barges*, 15 P. D. at p. 146.

(*z*) *The Cargo ex Sarpedon*, 3 P. D. at p. 34 ; *The Prinz Heinrich*, 13 P. D. at p. 34.

Their maritime lien.

right of seeking satisfaction by an action *in personam*,(*a*) a method of procedure which is, however, but rarely adopted.

The maritime lien extends to the ship, cargo, and freight, each of which, as has been already seen, is liable to contribute to the salvage in proportion to its value.(*b*) But it does not extend to the personal luggage or wearing apparel of passengers who are on board, or to other effects carried by them for their daily personal use.(*c*)

The salvage lien takes precedence of any other lien which may have attached previous to the services being rendered, because by saving the property, the salvors contribute to the benefit of all persons interested in it.(*d*) As between competing salvage liens the later takes precedence of the earlier, whilst in the case of damage liens the reverse rule obtains.(*e*) But salvors should proceed in the Admiralty Court to enforce their lien without unnecessary delay; for by undue delay, or improper detention, they may prejudice their claim, or even forfeit their rights altogether.(*f*)

Effect of delay in enforcing.

Neither the salvors' title to remuneration, nor their maritime lien on the ship salved, is in any way impaired or affected by their giving up possession of the ship to the owner;(*g*) and, therefore, when once the salvage has been completed, and the ship brought into port, the Court of Admiralty will not hold the salvors justified in retaining possession for any greater length of time than may be necessary for the purpose of securing their demands against the owner.(*h*)

Alternative remedy.

§ 748. The Merchant Shipping Acts restrict the right of the salvor to retain possession of the property, but provide in other ways for securing his claims.

By the Act of 1854,(*i*) the master may, in certain cases, obtain from the salvors the abandonment of their lien, on entering into an agreement binding the ship, cargo, and property alleged to be salved.

Voluntary agreement may be made which shall

497. Whenever services of which salvage is claimed are rendered either by the commander or crew or part of the crew of any of her Majesty's ships, or of any other ship, and the salvor voluntarily agrees

(*a*) *The Hope*, 3 C. Rob. 215; *The Cargo ex Schiller*, 2 P. D. at p. 149; 17 & 18 Vict. c. 78, s. 13; 17 & 18 Vict. c. 104, s. 458; 32 & 33 Vict. c. 51, s. 3.

(*b*) *The Westminster*, 1 W. Rob. at p. 233; *The Peace*, Swab. 115; *The Mary Pleasants*, Swab. 224; *ante* § 742.

(*c*) *The Willem III.*, L. R. 3 Ad. 487; *The Gustaf*, Lush. at p. 508.

(*d*) *The Cargo ex Galam*, B. & L. at p. 181.

(*e*) As to the nature and general incidents of a maritime lien, see *ante* §§ 74, 510, 638–640.

(*f*) *The Swan*, 1 W. Rob. at p. 72; *The Samuel*, 15 Jur. 407; *The Royal Arch*, Swab. at p. 285.

(*g*) *The Eleanora Charlotta*, 1 Hagg. 156.

(*h*) *The Glasgow Packet*, 2 W. Rob. at p. 313; *The Lady Worsley*, 2 Sp. at p. 255. As to the case of a derelict, see *The Champion*, B. & L. 69; *Cossman* v. *West*, 13 Ap. Ca. at p. 181. At common law the salvors were entitled to retain possession until satisfied by payment or tender. See *Hartfort* v. *Jones*, 1 Ld. Raym. 393; *Nicholson* v. *Chapman*, 2 H. Bl. 254.

(*i*) 17 & 18 Vict. c. 104.

to abandon his lien upon the ship, cargo, and property alleged to be salved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds (*k*) provided for by the eighth part of this Act, in the case of detention for salvage services rendered by her Majesty's ships; and upon such agreement being made the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the court in which the said agreement is to be adjudicated upon.

have the same effect as salvage bond.

§ 749. The Merchant Shipping Act, 1854,(*l*) contains the following provisions for the protection of salvors:

The statutory remedies.

Salvage in the United Kingdom.

460. Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined;(*m*) but, whenever any dispute arises elsewhere in the United Kingdom (*mm*) between the owners (*n*) of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Disputes as to salvage how to be settled.

Then, if the sum claimed (*o*) does not exceed two hundred pounds,(*oo*)

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows: (that is to say)

In case of wreck, resident at or near the place where such wreck is found:

In case of services rendered to any ship (*p*) or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises:

(*k*) See 17 & 18 Vict. c. 104, s. 486 (13); *ante* § 709. For form of bond see Appendix No. 15

(*l*) 17 & 18 Vict. c. 104.

(*m*) Upon questions of salvage arising within the Cinque Ports, "Commissioners appointed by the Lord Warden, consisting of three or more substantial persons in each of the Cinque Ports, two ancient towns and their members" (*i.e.*, in Dover, Sandwich, Romney, Hastings, and Hythe, and the two ancient towns, Winchelsea and Rye), are required and empowered to adjudicate, any three or more of them, within their own district, and within twenty-four hours of the matter being referred to them. An appeal lies either to the Admiralty Court of the Cinque Ports, or to the High Court of Admiralty for England. See 1 & 2 Geo. IV. c. 76, §§ 1-5, 15, 16, 18; and *The Maria Luisa*, Sw. 67.

(*mm*) See note (*r*) p. 604.

(*n*) Including all persons interested in the property; *The Louisa*, B. & L. 49.

(*o*) *The William and John*, B. & L. 49.

(*oo*) Now extended to £1000. See note (*r*) p. 604.

(*p*) Including a hopper barge; *The Mac*, 7 P. D. 126.

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent, shall in England be decided by the High Court of Admiralty of England,(q) in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim:

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salved, or of their respective agents.(r)

Manner in which justices may decide disputes.

461. Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may, if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to

(q) An award of salvage is a judgment debt, and bears interest from the date of entry of judgment; *The Jones Brothers*, 46 L. J. Ad. 75.

(r) This section is enlarged by the 49th sect. of 25 & 26 Vict. c. 63.

The provisions contained in the eighth part of the Principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows: (that is to say),

(1) Such provision shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as cases provided for by the Principal Act:

(2) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not:

(3) It shall be lawful for one of her Majesty's principal Secretaries of State, or in Ireland for the Lord Lieutenant or other Chief Governor or Governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised:

(4) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other:

(5) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at Petty Sessions.

(6) It shall be competent for any Stipendiary Magistrate, and also in England for any County Court Judge, in Scotland for the Sheriff or Sheriff Substitute of any county, and in Ireland for the Recorder of any borough in which there is a Recorder, or for the Chairman of Quarter Sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices:

(7) It shall be lawful for one of her Majesty's principal Secretaries of State to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid:

(8) All the provisions of the Principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the Principal Act or this Act, or both of such Acts.

See *The Jeune Paul*, L. R. 1 Adm. 336; *The Stella*, L. R. 1 Adm. 340.

And by 31 & 32 Vict. c. 71, s. 3, county courts having Admiralty jurisdiction may entertain salvage suits where the value of the property saved does not exceed £1000, or in which the amount claimed does not exceed £300. See *The Empress*, L. R. 3 Ad. 502. They can also deal with towage claims which do not exceed £150.

decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand to extend the time within which they and he are hereby respectively directed to make their or his award.

Costs of arbitration.

462. There shall be paid to every assessor and umpire who may be so appointed as aforesaid in respect of his services such sum not exceeding five pounds as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award.

Justices may call for documents and administer oaths.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

§ 750. An appeal from the award of the justices or umpire lies to the High Court:

Appeal to Courts of Admiralty.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session; but no such appeal shall be allowed unless the sum in dispute(*s*) exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award.

Justices to transmit copy of proceedings and certificate of value to Court of Appeal.

465. Whenever any appeal is made in manner hereinbefore provided, the justices shall transmit to the proper officer of the Court of Appeal a copy on unstamped paper certified under their hands to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause.

§ 751. Where the apportionment is in dispute the Act provides:

Payment of salvage, to whom to be made in case of dispute as to apportionment.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating

(*s*) See *The Andrew Wilson*, B. & L. 56; *The Mary Anne*, B. & L. 334; *The Generous*, L. R. 2 Ad. 57.

the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned.

Apportionment of salvage.

467. Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed.

§ 752. Power is given to the receiver of wreck to detain and sell the property salved in case of non-payment of salvage due:

Manner of enforcing payment of salvage.

468. Whenever any salvage is due to any person under this Act, the receiver shall act as follows: (that is to say)

(1) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel:

(2) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid:

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid;(*t*) and in cases where the claim for salvage exceeds two hundred pounds it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property salved, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said courts.

Power of receiver to sell property salved in cases of nonpayment.

469. Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for nonpayment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases: (that is to say)

(*t*) After such release salvors have no right to detain or arrest the property; *The Lady Katherine Barham*, Lush. 404.

(1) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due;

(2) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal;

(3) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days;

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

Subject to payment of expenses, fees, and salvage, owner entitled to wreck.

470. Subject to the payment of such expenses, fees, and salvage as aforesaid,(*u*) the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him.(*x*)

High Court of Admiralty may decide on all salvage cases, whether on sea or land.

476. Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.(*y*)

(*u*) Duties are payable if there be goods liable thereto; see ss. 499, 500 of the Act.

(*x*) By 25 & 26 Vict. c. 63, s. 52, such delivery will discharge the receiver from all liability in respect of the wreck, but will not prejudice any question as to title of wreck, or soil on which it may have been found.

(*y*) See 24 Vict. c. 10, s. 9, and 25 & 26 Vict. c. 63, s. 59, *ante* § 690.

CHAPTER XVI.

WRECKS AND CASUALTIES.

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Receivers of Wreck, their Powers and Duties.

§ 753. THE procedure on inquiries into wrecks has been already dealt with.(*a*) With reference to the appointment and duties of receivers of wreck,(*b*) the following sections of the Merchant Shipping Act, 1854,(*c*) apply:

Board of Trade superintendents of wreck, with power to appoint receivers.

439. The Board of Trade shall throughout the United Kingdom have the general superintendence of all matters relating to wreck; and it may, with the consent of the Commissioners of Her Majesty's Treasury, appoint any officer of customs or of the coastguard, or any officer of Inland Revenue, or, when it appears to such Board to be more convenient, any other person, to be a receiver of wreck in any district, and to perform such duties as are hereinafter mentioned, and shall give due notice of every such appointment.(*d*)

Admiral not to interfere with wreck.

440. No admiral, vice-admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, shall as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned.

Duty of receiver when any ship is stranded or in distress.

441. Whenever any ship or boat is stranded or in distress at any place or on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum of not exceeding fifty pounds; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

442. The receiver may, with a view to such preservation as aforesaid

(*a*) *Ante* § 43 *et seq.*

(*b*) By 17 & 18 Vict. c. 104, s. 2, "Wreck" shall include jetsam, flotsam, lagan, and derelict, found in or on the shores of the sea or any tidal water. And see 31 & 32 Vict. c. 45, s. 21. As to the powers and duties of the receiver of wreck in salvage cases, see *ante* §§ 751, 752.

(*c*) 17 & 18 Vict. c. 104.

(*d*) See 17 & 18 Vict. c. 120, ss. 10-13.

of the ship or boat, persons, cargo, and apparel, do the following things: (that is to say)

Powers of receiver in case of such accident to any ship or boat.

(1) Summon such number of men as he thinks necessary to assist him:

(2) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power:

(3) Demand the use of any waggon, cart, or horses that may be near at hand:

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding one hundred pounds; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart, or horses by reason of the user of the same under this section.

All articles washed on shore, or lost, or taken from any ship or boat, to be delivered to the receiver.

443. All cargo and other articles belonging to such ship or boat as aforesaid, that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver, or to any person authorized by him to demand the same, shall incur a penalty not exceeding one hundred pounds; and it shall be lawful for such receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

Power of receiver to suppress plunder and disorder by force.

444. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or obstruction as aforesaid, with power to command all Her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or any other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

Certain officers to exercise powers of receiver in his absence.

445. During the absence of the receiver from the place where any such accident as aforesaid occurs, or in places where no receiver has been appointed under this Act, the following officers in succession, each in the absence of the other, in the order in which they are named: (that is to say) any principal officer of customs or of the coastguard, or officer of Inland Revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of her Majesty, or commissioned officer on full pay in the military service of her Majesty, may do all matters and things hereby authorized to be done by the receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

Power in case of a ship being in distress to

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or

pass over adjoining lands with carriages.

the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing or deposit as aforesaid shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

Penalty on owners and occupiers of land refusing to allow carriages, &c., to pass over their land.

447. If the owner or occupier of any land over which any person is hereby authorized to pass or repass for any of the purposes hereinbefore mentioned does any of the following things: (that is to say)

(1) Impedes or hinders any such person from so passing or repassing with or without carriages, horses, and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however;

(2) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned;

(3) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit;

He shall for every such offence incur a penalty not exceeding one hundred pounds.

Power of receiver to institute examination with respect to ships in distress.

448. Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters: (that is to say)

(1) The name and description of the ship;
(2) The name of the master and of the owners;
(3) The names of the owners of the cargo;
(4) The ports or places from and to which the ship was bound;
(5) The occasion of the distress of the ship;
(6) The services rendered;
(7) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary:

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination every such receiver or justice as aforesaid shall have all the powers (*e*) given by the first part of this Act to inspectors appointed by the Board of Trade (*f*).

(*e*) See sect. 15 of the Act, *ante* § 46 n.

(*f*) 39 & 40 Vict. c. 80, s. 31, gives a wreck commissioner the same powers with respect to instituting examinations as a receiver has under this section.

§ 754. When wreck is found the following statutory requirements must be complied with:

450. The following rules shall be observed by any person finding or taking possession of wreck within the United Kingdom: (that is to say)

Rules to be observed by persons finding wreck.

(1) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver of the district within which such wreck is found, stating that he has so found or taken possession of the same; and he shall describe in such notice the marks by which such wreck is distinguished;

(2) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such receiver as aforesaid:

And any person making default in obeying the provisions of this section shall incur the following penalties: (that is to say)

(3) If he is the owner and makes default in performing the several things the performance of which is hereby imposed on an owner, he shall incur a penalty not exceeding one hundred pounds;

(4) If he is not the owner and makes default in performing the several things the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage;(*g*)

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount); and

He shall incur a penalty not exceeding one hundred pounds.

Power for receivers to seize concealed wreck.

451. If any receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any justice of the peace for a warrant, and such justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the receiver to enter into any house or other place wherever situate, and also into any ship or boat, and to search for, and to seize and detain any such wreck as aforesaid there found; and if any such seizure is made in consequence of information that may have been given by any person to the receiver, the informer shall be entitled by way of salvage to such sum not exceeding in any case five pounds as the receiver may allow.

Notice of wreck to be given by receiver.

452. Every receiver shall within forty-eight hours after taking possession of any wreck cause to be posted up in the custom house of the port nearest to the place where such wreck was found or seized a description of the same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds twenty pounds, but not otherwise, transmit a similar description to the secretary of the committee of Lloyd's aforesaid; and such secretary shall post up the description so sent, or a copy thereof, in some conspicuous place, for the inspection of all persons desirous of examining the same.

Goods deemed perishable or of small value may be sold immediately.

453. In cases where any wreck in the custody of any receiver is under the value of five pounds, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of

(*g*) This does not apply to salvors who have found a derelict vessel and restored her to her owners; *The Zeta*, L. R. 4 Ad. 460; nor to a person who takes possession of a wreck believing himself to be the owner thereof; *The Liffey*, 58 L. T. 351.

the period hereinafter mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the receiver for the same purposes and subject to the same claims for and to which the article sold would have been held and liable if it had remained unsold.

In cases where any Lord of the Manor or other person is entitled to unclaimed wreck, receiver to give notice to him.

454. In cases where any admiral, vice-admiral, lord of the manor, or other person is entitled for his own use to unclaimed wreck found on any place situate within a district for which a receiver is appointed, such admiral, vice-admiral, lord of the manor, or other person shall deliver to such receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered and proof made to the satisfaction of the receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid.

Payments to be made to receiver.

455. There shall be paid to all receivers appointed under this Act the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the table marked V. in the schedule hereto, such fees, not exceeding the amounts therein mentioned, as may from time to time be directed by the Board of Trade; and the receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him; but, save as aforesaid, no receiver appointed under this Act shall, as such, be entitled to any remuneration whatsoever.(*h*)

Unclaimed Wreck in the United Kingdom.

§ 755. With respect to wreck which is unclaimed, or to which the title is disputed, the following provisions have effect:

Receiver to deliver up possession of unclaimed wreck to lord of manor or other person entitled.

471. In the event of no owner establishing a claim to wreck found in any place in the United Kingdom before the expiration of a year from the date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid, has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such place, the receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor, or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck.

Disputed title to wreck how to be decided.

472. If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor, or other person as aforesaid, as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined.

Appeal from decision of justices.

473. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision, he may within three months from the expiration of such year as aforesaid, or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any court of law,

(*h*) See 17 & 18 Vict. c. 120, ss. 12, 13, and 18 & 19 Vict. c. 91, s. 20.

equity, or admiralty having jurisdiction in the matter, for establishing his title.

474. The Board of Trade shall have power, with the consent of the Treasury, out of the revenue arising under the eighth part of this Act, for and on behalf of her Majesty, her heirs and successors, to purchase all such rights to wreck as may be possessed by any person or body corporate, other than her Majesty; and for the purpose of facilitating such purchases, the provisions of the "Lands Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (Scotland) Act, 1845," relating to the purchase of lands by agreement, shall be incorporated with this Act; and in the construction of this Act and the said incorporated Acts this Act shall be considered to be the "Special Act"; and any such rights to wreck as aforesaid shall be considered as an interest in land authorized to be taken by the Special Act, and her Majesty, her heirs and successors, shall be considered as the promoters of the undertaking.

Power of the Board of Trade on behalf of the Crown to purchase rights to wreck.

475. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor, or person other than her Majesty, her heirs and successors, is proved to be entitled to such wreck, the receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any) incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the [Mercantile Marine Fund].(*i*)

Unclaimed wreck to be sold.

Offences in respect of Wreck.

§ 756. In case of plunder or destruction of wreck the Act provides:

477. Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such ship, boat, cargo, or apparel, as follows: (that is to say)

In case of shipwreck being plundered by a tumultuous assemblage the hundred to be liable for damages.

In England [out of the police rate of the police district in or nearest to which the said offence is committed](*k*):

In Ireland by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence is committed, in manner provided by an Act of the fourth year of the reign of King William the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels, and other buildings used for religious worship according to the usage of the United Church of England and Ireland, or as near thereto as circumstances permit;

3 & 4 W. 4, c. 37, s. 72.

In Scotland, by the inhabitants of the county, city, or borough in or nearest to which such offence is committed, in manner provided by an Act of the first year of King George the First, statute two, chapter five, with respect to prosecutions for repairing the damages

1 G. 1, stat. 2, c. 5.

(*i*) 45 & 46 Vict. c. 55, s. 4 (*c*). And see 25 & 26 Vict. c.63, s. 53, as to the protection of the revenues of the Duchies of Lancaster and Cornwall.

(*k*) See The Riot (Damages) Act, 1886, 49 & 50 Vict. c. 38, s. 6.

of any churches and other buildings, or as near thereto as circumstances permit:

478. Every person who does any of the following acts: (that is to say)

Penalty for plundering in cases of shipwreck, for obstructing the saving of shipwrecked property, and for secreting the same.

(1) Wrongfully carries away or removes any part of any ship or boat stranded, or in danger of being stranded, or otherwise in distress on or near the shore of any sea or tidal water, or any part of the cargo or apparel thereof, or any wreck; or

(2) Endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel, or wreck; or

(3) Secretes any wreck, or obliterates or defaces any marks thereon;

Shall, in addition to any other penalties or punishment he may be subject to under this or any other Act or law,(*l*) for each such offence incur a penalty not exceeding fifty pounds; and every person, not being a receiver or a person hereinbefore authorized to take the command in cases of ships being stranded or in distress, or not acting under the orders of such receiver or person, who, without the leave of the master, endeavours to board any such ship or boat as aforesaid, shall for each offence incur a penalty not exceeding fifty pounds; and it shall be lawful for the master of such ship or boat to repel by force any such person so attempting to board the same.

Penalty for selling wreck in foreign ports.

479. If any person takes into any foreign port or place any ship or boat stranded, derelict, or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or anything belonging thereto, or any wreck found within such limits as aforesaid, and there sells the same, he shall be guilty of felony, and be subject to penal servitude for a term not exceeding four years.

§ 757. The Merchant Shipping Act Amendment Act, 1855,(*ll*) supplements the Act of 1854 as follows:

In case of wreck of foreign ships, consul-general to be deemed agent of owner.

19. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul-general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

Remuneration for services by coastguard.

20. In cases where services are rendered by officers or men of the coastguard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade,

(*l*) 24 & 25 Vict. c. 96, ss. 64–66, prescribe varying degrees of punishment for the offences of stealing from a ship in distress or wrecked, offering shipwrecked goods for sale when unlawfully taken, or not giving a satisfactory account of their possession.

24 & 25 Vict. c. 97, s. 49, punishes persons destroying wrecks or any articles belonging thereto. See *ante* § 536.

24 & 25 Vict. c. 100, ss. 17 & 37, deals with those who impede a person endeavouring to save himself from shipwreck, or who assault an official on account of his preserving wreck.

(*ll*) 18 & 19 Vict. c. 91.

so, however, that such scale shall not exceed any scale by which payment to officers and men of the coastguard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854.

The Master's Duty to the Underwriters on Abandonment.

§ 758. It remains briefly to notice the master's duty to the underwriters on the occurrence of any casualty justifying abandonment.

Casualty justifying abandonment.

He is bound to use all reasonable means to preserve the ship and cargo and to avert a total loss, so as to lighten as far as possible the burden that will fall upon the underwriters. In so doing he acts as their agent, and the exertions which he makes to save the property in no way prejudice the right of the assured to insist on the abandonment.(*m*) The law on this subject cannot be better stated than in the words of Sir Joseph Arnould:(*n*)

"Immediately, therefore, that the emergency arises, and before notice of abandonment has been given, the master is bound to take every necessarry measure for the defence, safeguard, and recovery of the thing insured; in so doing he acts as the agent for both parties, or, more accurately speaking, as the agent of the party who may eventually turn out to be interested in the salvage, and, as such, derive benefit from his exertions. If no abandonment be made, that party is, of course, the assured himself; and it is to him the master must look for all the expenses *bonâ fide* incurred in the agency. In case, however, of an abandonment which is either accepted or ultimately effectual, the underwriter becomes the owner of the property from the moment of the casualty, and, therefore, the master, by operation of law, is his agent in so acting. On this principle, if a captured ship be repurchased by the master and no notice of abandonment be given, the repurchase is for his owners; and in case the transaction be legal and the master have acted *bonâ fide*, and within his authority in the circumstances, they are bound by his acts, and precluded from recovering a total loss, if the ship is restored to the country of her owners before action brought.(*o*) Where, however, under similar circumstances, notice of abandonment has been given and accepted, and the repurchase not effected by the master till after such notice, it has been decided in the United States,

Whose agent the master is before notice of abandonment.

Whose agent the master is after abandonment.

(*m*) Arnould, § 417. The regular "suing and labouring" clause inserted in all English policies expressly provides that the efforts of the assured to save the property shall not prejudice the insurance. See *Stringer* v. *English, &c., Insurance Co.*, L. R. 4 Q. B. at p. 686.

(*n*) Arnould, § 417, 4th ed., p. 872.

(*o*) *M'Masters* v. *Shoolbred*, 1 Esp. 237; *Wilson* v. *Forster*, 6 Taunt. 25.

that the repurchase was for the underwriters, if they chose to take to it, but that they were not bound by it."

If, after the abandonment of the ship, the master busies himself about the performance of the contract of charter-party, as, for instance, by taking up another ship in order to carry on the cargo or passengers, he is not in so doing acting as the agent of the underwriters on the ship, for their rights and liabilities relate only to the abandoned ship and extend no further. They have, therefore, no claim to the freight carried by the substituted ship.(*p*)

(*p*) Arnould, 4th ed., p. 874; *Hickie* v. *Rodocanachi*, 4 H. & N. 455; *Kidston* v. *Empire, &c., Co.*, L. R. 1 C. P. 535; on app. L. R. 2 C. P. 357; but see *Miller* v. *Woodfall*, 8 E. & B. 493.

CHAPTER XVII.

THE MASTER'S DUTIES UNDER THE CUSTOMS ACTS.

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§ 759. The Customs Acts impose on the master serious responsibilities with respect to the shipping and loading of goods, and prescribe heavy penalties in case of default.(*a*) The sections particularly affecting the master are as follows:

By the Revenue Act, 1883:(*b*)

As to Importation and Warehousing.

5. If any ship on arrival at any port or place in the United Kingdom or the Channel Islands shall not come as quickly up to the proper place of mooring or unlading as the nature of the port or place will admit without touching at any other place, and in proceeding to such proper place shall not bring to at the station appointed by the Commissioners of Customs for the boarding of ships, or if after arrival at such place such ship shall remove therefrom except with the knowledge of the proper officer of Customs directly to some other proper place of mooring or unlading, the person having charge of such ship, whether master or pilot, shall forfeit the sum of twenty pounds.

Vessels arriving to come quickly to place of unlading, and bring to at the stations for boarding officers. Penalty for neglect, £20.

6. If the master of any ship shall neglect or refuse to provide sufficient room and accommodation under the deck for the bed or hammock of every officer of Customs stationed on board such ship he shall forfeit the sum of twenty pounds.

Accommodation of officers on board. Penalty £20.

By the Customs Consolidation Act, 1876:(*c*)

47. The proper officers of the Customs may board any ship arriving at any port in the United Kingdom or the Channel Islands, and stay on board until all the goods laden therein shall be duly delivered therefrom, or until her departure, and shall have free access to every part thereof, with power to fasten down hatchways or entrances to the hold, and to

Officers to board ships.

To have free access to all parts.

(*a*) The importation of certain classes of goods into the United Kingdom is prohibited, and of others restricted, under penalty of forfeiture. A complete list of such articles will be found on reference to the following statutes: 39 & 40 Vict. c. 36, s. 42, as amended by 46 & 47 Vict. c. 39; 46 & 47 Vict. c. 55, ss. 2, 19; and 52 & 53 Vict. c. 42, ss. 1, 2.

(*b*) 46 & 47 Vict. c. 55.

(*c*) 39 & 40 Vict. c. 36.

IMPORTATION AND WAREHOUSING.

May seal or secure goods and open locks. Goods concealed, forfeited. If seal, &c., broken, master to forfeit £100.

mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board such ship; and if any place or any box or chest be locked, and the keys be withheld, any examining or superior officer may open any such place, box, or chest in the best manner in his power; and if any goods be found concealed on board any such ship they shall be forfeited; and if the officers shall place any lock, mark, or seal upon any goods on board, or on any place or package in which the same may be, and such lock, mark, or seal be wilfully opened, altered, or broken before due delivery of such goods, or if any of such goods be secretly conveyed away, or if the hatchways or entrances to the hold, after having been fastened down by the officer, be opened, the master of such ship shall forfeit the sum of one hundred pounds.

By the Revenue Act, 1883 :(*d*)

If seals upon stores inwards be broken, or the stores secretly conveyed away, master to forfeit £20.

7. If the proper officer of the Customs shall place any lock, mark, or seal upon any stores or upon any place or package in which the same may be on board any ship or vessel arriving in the United Kingdom, and such lock, mark, or seal shall be wilfully opened, altered, or broken, or if any stores so secured shall be secretly conveyed away, either while the ship remains in the port at which she shall have so arrived, or at any other port in the United Kingdom to which she may proceed, or on her passage from one port to another, the master of such ship shall forfeit the sum of twenty pounds.

§ 760. By the Customs and Inland Revenue Act, 1881 :(*e*)

Time and place for landing goods inwards.

9. No goods, except diamonds and bullion, and lobsters and fresh fish of British taking, imported in British ships, which goods may be landed without report or entry, shall be unshipped from any ship arriving from parts beyond the seas, or be landed or put on shore on Sundays or holidays, except by special permission of the Commissioners of Customs; nor shall they be unshipped, landed, or put on shore on any other days except between the hours of eight o'clock in the morning and four o'clock in the afternoon from the first day of March to the thirty-first day of October, both inclusive, and between the hours of nine o'clock in the morning and four o'clock in the afternoon during the remainder of the year, or between such other hours as may be appointed by the Commissioners of Customs; nor shall any goods whatever be unshipped or landed at any time unless in the presence or with the authority of the proper officer of Customs; nor shall they be so landed, except at some legal quay or wharf, or other place duly appointed for the landing or unshipping of goods, nor shall any goods, after having been unshipped or put into any boat or craft to be landed, be transshipped or removed into any other boat or craft previously to their being landed, without the permission of the proper officer of Customs; and if any goods shall be unshipped or removed from any importing ship for the purpose of being landed, they shall be forthwith taken to and landed at the wharf, quay, or other place at which the same are intended to be landed. If any goods shall be unshipped, landed, transhipped, removed, or dealt with contrary to the provisions of this section, they shall be forfeited, together with the barge, lighter, boat, or other vessel employed in removing the same.

By the Customs Consolidation Act, 1876 :(*f*)

49. If the importer, owner, or consignee of any bullion or coin, not

(*d*) 46 & 47 Vict. c. 55. (*e*) 44 Vict. c. 12. (*f*) 39 & 40 Vict. c. 36.

being small parcels forming part of the baggage of passengers imported into Great Britain or Ireland, shall not, within ten days after the landing thereof, deliver to the collector or other proper officer of Customs a full and true account thereof, including its weight and value, he shall forfeit a sum of twenty pounds.

IMPORTATION AND WAREHOUSING.

Account of bullion or coin to be delivered to the officers of Customs.

As to Report of Cargo.

Report of cargo.

§ 761. 50. The master of every ship, whether laden or in ballast, shall, within twenty-four hours after arrival from parts beyond the seas at any port in the United Kingdom, make due report of such ship to the collector or other proper officer in the form No. 1 in Schedule B to this Act,(*g*) and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct; and such report, except where otherwise specially allowed or provided for by their order or at ports where goods may be landed into transit sheds, shall be made before bulk be broken.

Master to report within 24 hours after arrival, according to Form No. 1 in Schedule B.

51. If such master shall fail to make due report, or if the particulars or any of them contained in such report be false, he shall forfeit the sum of one hundred pounds; and all goods not duly reported may be detained by any officer of Customs until so reported or the omission explained to the satisfaction of the Commissioners of Customs, and may in the meantime be removed to the Queen's warehouse.

On failure, master to forfeit £100. Goods not reported may be detained.

52. The captain or other officer having the charge of any ship (having commission from her Majesty or from any foreign State), having on board any goods laden in parts beyond the seas, shall, on arrival at any port in the United Kingdom, and before any part of such goods be taken out of such ship, or when called upon so to do by any officer of the Customs, deliver an account in writing under his hand to the best of his knowledge of the quality and quantity of every package or parcel of such goods, and of the marks and numbers thereon, and of the names of the respective shippers and consignees of the same, and shall make and subscribe a declaration at the foot of such account declaring to the truth thereof, and shall also truly answer to the collector or other proper officer such questions concerning such goods as shall be required of him, and on failure thereof such captain or other officer shall forfeit the sum of one hundred pounds; and all such ships shall be liable to such searches as merchant ships are liable to, and the officers of the Customs may freely enter and go on board all such ships, and bring from thence on shore into the Queen's warehouse any goods found on board any such ship as aforesaid, subject, nevertheless, to such regulations in respect to ships of war belonging to her Majesty as shall from time to time be directed in that respect by the Commissioners of her Majesty's Treasury.

Commissioned ships, British or foreign, having goods on board, persons in charge to deliver an account or forfeit £100.

Such ships liable to search.

53. The master of every ship arriving from parts beyond the seas shall at the time of making report answer all such questions relating to the ship, cargo, crew, and voyage as shall be put to him by the collector or other proper officer; and if he refuses to answer, or does not answer truly, or if, after the arrival within four leagues of the coast of the United Kingdom, bulk shall be broken, or any alteration made in the stowage of the cargo of such ship so as to facilitate the unlading of any part of such cargo before report of such ship and cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, unless cause be shown to the satisfaction of the

Master to answer questions.

Bulk not to be broken or stowage altered.

Penalty £100.

(*g*) See App. No. 16 (A).

IMPORTATION AND WAREHOUSING.

Commissioners of Customs, in every such case the master shall forfeit the sum of one hundred pounds.

Packages reported "Contents unknown" may be opened and examined. Prohibited goods forfeited.

54. If the contents of any package intended for exportation in the same ship shall be reported by the master as being unknown to him, the officers of the Customs may open and examine such package on board such ship, or bring the same to the Queen's warehouse for that purpose; and if there be found therein any goods which are prohibited to be imported, such goods shall be forfeited, unless the Commissioners of Customs shall permit them to be exported.

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Entry, time for.

As to the Time within which Goods shall be Entered and Landed after the Arrival of the Importing Ship.

Goods not entered within fourteen days may be conveyed to Queen's warehouse.

§ 762. 73. If the importer of any goods shall not, within fourteen days (exclusive of Sundays and holidays) after the arrival of the ship importing the same, make perfect entry or entry by bill of sight of such goods, or if, having made such entry, he shall not land such goods within such fourteen days or within such further period as the Commissioners of Customs shall direct, the officers of the Customs may convey such goods to the Queen's warehouse; and whenever the cargo of any ship shall have been discharged within such fourteen days with the exception of only a small quantity of goods, the officers of the Customs may forthwith deposit such remaining goods in the Queen's warehouse; and also at any time after the arrival of such ship may deposit any small packages or parcels of goods therefrom in the Queen's warehouse, there to remain for due entry during the remainder of such fourteen days, except as hereinafter mentioned; and if any goods so deposited in the Queen's warehouse being of a perishable nature shall not be cleared forthwith, or not being of a perishable nature shall not be cleared within three months after such deposit, or within such further period as the Commissioners may direct, and all charges of removal, freight, and warehouse rent be not paid, such goods may be sold and the produce thereof paid in discharge of duties, freight, and charges, and the overplus, if any, to the proprietor of the goods on his application for the same; and in case such goods cannot be sold for a sufficient sum to pay the duties and charges, if ordered for sale for home consumption, or the charges, if for exportation, the same may, by direction of the Commissioners of Customs, be destroyed; and any officer of Customs having the custody of any goods which shall have come to his hands under the Customs Acts, may refuse delivery thereof from the Queen's warehouse or other place of deposit until proof be given to his satisfaction that the freight due upon such goods has been paid: Provided that if the importing ship and goods be liable to the performance of quarantine, the time for entry and landing of such goods shall be computed from the time at which such ship and goods shall have been released from quarantine.

Small packages or quantities of goods may be deposited in Queen's warehouse. If duties and charges on such goods be not paid within three months, the goods may be sold.

Lien for freight payable before delivery of goods from Queen's warehouse.

Combustibles not to be deposited in Queen's warehouse.

74. No goods of a combustible or inflammable nature shall be brought into or deposited in the Queen's warehouse unless with the sanction of the Commissioners of Customs; and if any such goods shall be landed by the officers of Customs under the provisions of the Customs Acts, the same may be deposited in any other available place that such officers may deem fit, and whilst so deposited the same shall be deemed to be in the Queen's warehouse, and be liable to be dealt with, at the expiration of fourteen days, in the same manner as goods of a perishable nature

actually deposited in the Queen's warehouse, unless duly cleared or warehoused in some approved warehouse in the meantime; and such goods shall be chargeable with such expenses for securing, watching, and guarding the same until sold, cleared, or warehoused as aforesaid, as the Commissioners shall see fit, and neither the said Commissioners nor their officers shall be liable to make good any damage which such goods may sustain by reason or during the time of their being so deposited and dealt with as aforesaid.

IMPORTATION AND WAREHOUSING.

75. Whenever any goods shall remain on board any importing ship beyond the period of fourteen days after the arrival of such ship, or beyond such further period as the Commissioners of Customs may allow, such ship shall be detained by the proper officer of Customs until all expenses of watching or guarding such goods beyond such fourteen days, or such further time, if any, allowed as aforesaid, not exceeding five shillings per diem, and of removing the goods, or any of them, to the Queen's warehouse, in case the officers shall so remove them, be paid, and the like charge per diem shall be made in respect of any derelict or other ship coming, driven, or brought into the United Kingdom under legal process, by stress of weather, or for safety, when it is necessary to station any officer of Customs in charge, either on board thereof or otherwise, for the protection of the revenue, so long as the officer shall so remain.

If goods remain on board importing ship beyond fourteen days, such ship may be detained for expenses.

AS TO THE EXPORTATION, ENTRY, AND CLEARANCE OF SHIPS TO PARTS BEYOND THE SEAS.

EXPORTATION.

§ 763. 100. No person shall export any warehoused goods, or goods liable to duties of Customs transhipped, or goods entitled to drawback on exportation, nor shall enter any such goods for exportation from the United Kingdom to parts beyond the seas, in any ship of less burden than forty tons.

Warehoused goods not to be exported in ship of less than forty tons burden.

101.(*h*) The master of every ship in which any goods are to be exported from the United Kingdom to parts beyond the seas, or his agent, shall, before any goods be taken on board, except as is hereafter provided, deliver to the collector a certificate from the proper officer of the due clearance inwards or coastwise of such ship of her last voyage, and shall also deliver therewith an entry outwards of such ship verified by his signature in the form No. 6 in Schedule B to this Act,(*i*) and containing the several particulars indicated in or required thereby, or in such other form or manner as the Commissioners of Customs may direct; and if such ship shall have commenced her lading at some other port, the master shall deliver to the proper officer the clearance of such goods from such other port; and if any goods be taken on board any ship at any port before she shall have entered outwards at such port (unless a stiffening order, when necessary, shall be issued by the proper officer to lade any heavy goods for exportation on board such ship), the master shall forfeit the sum of one hundred pounds; provided that, on the arrival at any port in the United Kingdom of any ship about to deliver her cargo at more than one port in the United Kingdom, it shall be lawful, subject to such regulations as the Commissioners of Customs may deem necessary, to allow the entry outwards of such ship, and to permit the shipment of goods . . . . for exportation in such ship to the foreign destination for which such ship shall be entered outwards, before

Master of vessels outwards to deliver certificate of clearance of last voyage, and to make entry outwards.

Form No. 6.

Penalty £100.

Shipment of goods for exportation.

(*h*) This section is printed as amended by the Revenue Act 1889, 52 & 53 Vict. c. 42, s. 5.

(*i*) See App. No. 16 (B).

EXPORTATION.

the whole of the goods imported in such ship shall have been discharged therefrom, the complete separation of such goods from the inward cargo being effected to the satisfaction of the collector or other proper officer of the port: Provided also, that on any ship commencing to load goods for exportation to parts beyond the seas . . . . and about to proceed to any other port in the United Kingdom to complete her loading, it shall be lawful, subject to such regulations as the Commissioners of Customs may deem necessary, to permit such ship, notwithstanding any provisions to the contrary, to convey goods . . . . from the port at which such ship shall commence loading to any other port or ports in the United Kingdom for delivery there, the complete separation of such goods from the cargo to be exported to be effected to the satisfaction of the collector or other proper officer at the port of shipment.

Goods not to be shipped except on proper days and places, nor until entry and clearance.

102. No warehoused or drawback goods shall be shipped, put off, or water-borne to be shipped for exportation from any port or place in the United Kingdom on Sundays or public holidays, except by special permission of the Commissioners of Customs, nor from any place not being a legal quay, wharf, or other place duly appointed for such purpose, nor without the presence or authority of the proper officer of Customs, nor before due entry outwards of such ship and due entry of such goods, nor before due clearance thereof for shipment; and any such goods shipped, put off, or water-borne to be shipped contrary hereto shall be forfeited; and it shall be lawful for such officers to open and examine all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for that purpose of packages containing such goods, and the weighing, repacking, landing (when water-borne), and the shipping thereof, shall be done by or at the expense of the exporter.(*k*)

Officers may open packages and examine goods.

British and Irish spirits in nine-gallon casks.

103. If any British or Irish spirits shall be exported from Great Britain or Ireland to parts beyond the seas, or be removed to the Isle of Man, or be brought to Great Britain or Ireland, or to any wharf, quay, or other place, or water-borne for that purpose, in casks containing less than nine gallons each of such spirits, the same shall be liable to forfeiture.

§ 764. By the Customs and Inland Revenue Act, 1881:(*l*)

Specifications for free goods six days after clearance.

11. The exporter of goods for which no bond is required shall (except as hereinafter provided) within six days after the final clearance outwards of the exporting ship, or within such other period as the Commissioners of Customs may direct, either by himself or his agent, deliver to the proper officer of Customs at the port of shipment a specification in the Form No. 8 or No. 9 in Schedule B to the Customs Consolidation Act, 1876, according to the nature of the goods, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct, and shall subscribe the declaration at the foot thereof, and on the demand of the proper officer of Customs shall produce the invoice bills of lading, and other documents relating to the goods to test the accuracy of such specification; and on failure to comply with any of the foregoing requirements, the exporter or agent shall for every such offence forfeit five pounds; and in case any of the particulars contained

Forms Nos. 8 and 9.

(*k*) By 40 Vict. c. 13, s. 3, the provisions of this section as to warehoused and drawback goods are to apply also to all other goods, except so far as relates to their entry and clearance before shipment.

(*l*) 44 Vict. c. 12.

in any such specification shall be incorrect or inaccurate, the person subscribing the declaration shall forfeit the like penalty.

EXPORTATION.

Provided always that no salmon shall be shipped to be exported without previous entry thereof in accordance with the Salmon Fishery Acts for the time being, nor except upon due compliance in all other respects with the provisions of such Acts.

Except as to salmon.

By the Revenue Act, 1889 ;(*o*)

3. Where a ship touching at a port in the United Kingdom for the purpose only of taking in coals or fuel for use, and proceeding on a voyage to a foreign port, is not, under the regulations of the Commissioners of Customs, required to clear, every person who ships such coals or fuel shall, for the purposes of section eleven of the Customs and Inland Revenue Act, 1881, be deemed to be the exporter of the coals or fuel.

Shippers of fuel, to be used on board only, to be exporters within 44 & 45 Vict. c. 12.

Provided that the period within which the specification mentioned in that section is required to be delivered shall, in the case of such coals or fuel, be reckoned from the time of shipment.

By the Revenue Act, 1884 ;(*p*)

3. (1) Upon the exportation of any goods for which no bond is required, whether as whole or part cargo, the master or owner of the ship shall, by himself or his agent, within six days after the final clearance thereof, deliver to the proper officer of customs a manifest of all the shipped goods of every kind, setting forth the marks, numbers, and descriptions of the packages, and the names of the consignors thereof, according to the bills of lading relating thereto, and shall make and subscribe a declaration that such manifest contains a true account of all the cargo of the ship.

Master or owner to deliver manifest of goods shipped, and in case of steamships certificate of coal to be used on board.

(2) Provided that the non-delivery of a manifest as hereinbefore required shall not be an offence under this section if, with the specification or specifications prescribed by, and duly delivered in accordance with, section 11 of the Customs and Inland Revenue Act, 1881,(*q*) there shall be delivered also to the proper officer of Customs a declaration subscribed by the master, or owner, or the agent of the master or owner, of the ship, that there is contained in such specification or specifications a true account of all the shipped goods for which no bond is required, and if upon notice in writing from the proper officer of Customs that a full and complete manifest must still be delivered, the same shall be duly furnished within forty-eight hours after such notice shall have been given. A notice addressed to the master or owner and delivered at the last known place of abode or business of the owner, or his agent, shall be deemed to be a sufficient notice to the master and owner under this section.

(3) The master or owner of every steamship trading to a foreign port shall, by himself or his agent, within six days after the final clearance of the ship, deliver to the proper officer of Customs a certificate of the quantity of coals or fuel shipped for use on the voyage.

(4) If any of the requirements of this section be not complied with, or if any manifest or certificate delivered shall be incomplete or incorrect, then the master and the owner of the ship and also the agent subscribing the declaration or certificate shall each be liable to forfeit the sum of five pounds for every such offence, and they or any one of

(*o*) 52 & 53 Vict. c. 42. (*p*) 47 & 48 Vict. c. 62. (*q*) *Ante* p. 622.

EXPORTATION. them at the election of the Commissioners of Customs may be proceeded against accordingly.

By the Customs and Inland Revenue Act, 1879 :(r)

Warehouse or debenture goods not duly exported.

7. If any goods which have been cleared to be exported from the warehouse or for any drawback shall be shipped or entered to be shipped on board any vessel of less burden than forty tons, or shall not be duly exported to and landed in parts beyond the seas, or if the same or any other goods which shall have been shipped for exportation shall be unshipped or relanded in any part of the United Kingdom (such goods not having been duly relanded or discharged as short-shipped under the care of the proper officers), or shall be carried to any of the Channel Islands (not having been duly entered, cleared, and shipped to be exported or carried directly to such islands), the same shall be forfeited, together with any ship, boat, or craft which may have been used in so unshipping, relanding, landing, or carrying such goods from the ship in which the same were shipped for exportation: and the master of such ship, and any person by whom or by whose orders or means such goods shall have been so unshipped, relanded, landed, or carried, or who shall aid, assist, or be concerned therein, shall forfeit, at the election of the Commissioners of Customs, a sum equal to treble the duty-paid value of such goods or the penalty of one hundred pounds.

Penalty £100. or treble value.

As to the Shipment of Stores.

§ 765. By the Customs Consolidation Act, 1876 :(s)

Victualling bill for stores.

126. The master of every ship of the burden of forty tons or upwards departing from any port in the United Kingdom upon a voyage to parts beyond the seas shall, upon due authority and request made by him, and upon such terms and conditions as the Commissioners of Customs may direct, receive from the export officer an order for the shipment of such stores as may be required and allowed by the collector or other proper officer for the use of such ship, with reference to the number of the crew and passengers on board and the probable duration of the voyage on which she is about to depart; and every such request shall be made in such form and manner as the collector or other proper officer shall require, and shall be signed by the master or owner of the vessel; and the master, or his agent duly authorized by him in writing for that purpose, shall deliver to the export officer the stores content, containing the particulars of such stores, and shall make out and subscribe thereon, in the presence of the proper officer, a declaration that the contents thereof are true, and that all the requirements of the Merchant Shipping Acts respecting outward-bound ships have been complied with, and also an account of the stores so shipped, together with any other stores then already on board, and the latter, when signed by the export officer and countersigned by the collector or other proper officer, shall be the victualling bill; and no stores shall be shipped for the use of any ship, nor shall any articles taken on board any ship, be deemed to be stores, except such as shall be borne upon such victualling bill; and if any such stores shall be relanded at any place in the United Kingdom (without the sanction of the proper officers of Customs), the same shall be forfeited, and the master and owner of the ship shall each be liable to a penalty of treble the value

Stores illegally relanded forfeited, and penalty £100.

(r) 42 & 43 Vict. c. 21. (s) 39 & 40 Vict. c. 36.

of such stores, or one hundred pounds, at the election of the Commissioners. EXPORTATION.

As to Clearance Outwards.

§ 766. 127. If there be on board any ship any goods being part of the inward cargo reported for exportation in the same ship, the master shall, before clearance outwards of such ship from any port in the United Kingdom, deliver to the searcher a copy of the report inwards of such goods, certified by the collector or other proper officer, and if such copy be found to correspond with the goods so remaining on board, the export officer shall sign the same, to be filed with the certificates or shipping bills, if any, and victualling bill of the ship.

If inward cargo reported for exportation, copy of report thereof to be delivered to the searcher.

128. Before any ship shall be cleared outwards from the United Kingdom, the master, or other person authorized in writing by him, shall attend before the collector or other proper officer, and shall answer all such questions as shall be demanded of him by such collector or other proper officer concerning the ship, the cargo, and the voyage, and shall deliver to the collector or other proper officer a content of such ship in the form No. 10 in Schedule B to this Act,(*t*) or to the same effect, and containing the several particulars therein required as far as the same can be known by him, and shall make and subscribe the declaration at the foot thereof in the presence of the collector or other officer, unless such content shall be in any case dispensed with by the Commissioners of Customs under such regulations as they may see fit, and before clearance shall deliver the certificates, if any, to the collector or other proper officer, who shall file them, together with a copy of the report inwards, if any, of goods reported for exportation in such ship, and the victualling bill, with a label attached and sealed thereto in the form and to the effect following:

Before clearance, certificates to be delivered to the proper officer. Content. Form No. 10.

(Seal.)

CLEARANCE LABEL.

Number of Certificates (*Numbers in Figures*).
Ship (*Name of Ship*).
Master (*Name of Master*).
Date of Clearance_____

Signatures of Collector or other proper Officers of Customs } _____

and such label, when filled up and signed by the proper officers, shall be the clearance and authority for the departure of the ship.

Label signed, authority to depart.

129. When any ship having been cleared at one port proceeds to take in goods at any other port, the master shall, after due shipment of such goods at such other port, deliver to the collector or other proper officer there an additional like content of the goods so shipped, and so on from port to port until final clearance outwards of the ship, and in each instance the additional certificates, if any, and other necessary documents, shall be attached to the label used at the first port of departure, and be sealed in like manner.

Additional content for goods shipped at other ports.

130. If any goods for the exportation of which in any ship bond shall have been given shall not be duly shipped before the departure of such ship, such goods shall be forfeited unless due notice of the non-shipment thereof shall be given to the proper officer immediately after such departure, in order that he may certify the short shipment

Short shipment of goods to be notified to proper officer.

(*t*) See App. No. 16 (C).

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Goods unshipped.

thereof; and if such goods shall not within fourteen days after the final clearance of the ship be re-warehoused or re-entered for exportation under bond in some other ship, the person entering the same shall forfeit the sum of five pounds; and if any goods shall be unshipped without the sanction of the proper officer of Customs in any part of the United Kingdom from any ship entered outwards, such goods shall be forfeited and the master of such ship and every person concerned in such unshipment shall forfeit one hundred pounds, or treble the value of the goods so unshipped or landed.

Penalty.

Goods shipped contrary to provisions forfeited.

131. If any goods for which entry before shipment is required shall be shipped, put off, or water-borne to be shipped, without being duly cleared, or otherwise contrary to the provisions of this or any other Act relating to the Customs, the same shall be liable to forfeiture.

Penalty on departing without being cleared.

132. If any ship having on board any goods shipped as cargo or any goods reported inwards for exportation in such ship, or any stores liable to duty or entitled to drawback, shall depart from any port without being duly cleared, the master shall forfeit the sum of one hundred pounds.

By the Customs and Inland Revenue Act, 1878:(*u*)

In ballast.

6. If any ship shall depart in ballast from the United Kingdom for parts beyond the seas, not having any goods on board except stores borne upon the victualling bill, nor any goods reported inwards for exportation in such ship, the collector or other proper officer shall, on the application of the master, clear such ship in ballast; and the master of such ship shall answer to the collector or other proper officer such questions touching her departure and destination as shall be demanded of him; and ships having only passengers with their baggage on board, and ships laden only with chalk or slate, shall be deemed to be in ballast, and if any ship, whether laden or in ballast, shall depart without being duly cleared, the master shall forfeit one hundred pounds.

Master to answer questions. Ships carrying passengers, chalk, or slate in ballast. Penalty £100.

As to Boarding and Departure of Ships after Clearance.

Boarding of ships.

§ 767. By the Customs Consolidation Act, 1876:(*x*)

Officer may board ship after clearance.

134. Any officer of Customs may go on board any ship after clearance outwards within the limits of any port in the United Kingdom, or within one league of the coast thereof, and may demand the ship's clearance, and if the master shall refuse to produce the same and answer such questions concerning the ship, cargo, and intended voyage as may be demanded of him, he shall forfeit the sum of five pounds.

Master refusing to answer to forfeit £5.

If officers put seals upon stores from the warehouse outwards, and such seals be broken, master to forfeit £20.

135. If any officer of Customs shall place any lock, mark, or seal upon any stores or goods taken from the warehouse without payment of duty as stores on board any ship or vessel departing from any port in the United Kingdom, and such lock, mark, or seal be wilfully opened, altered, or broken, or if such stores be secretly conveyed away, either while such ship or vessel remains at her first port of departure, or at any port or place in the United Kingdom, or on her passage from one such port or place to another before the final departure of such ship or vessel on her foreign voyage, the master shall forfeit the sum of twenty pounds.

Ships not bringing to at stations, penalty £20.

136. If any ship departing from any port in the United Kingdom shall not bring to at such stations as shall be appointed by the Com-

(*u*) 41 Vict. c. 15. (*x*) 39 & 40 Vict. c. 36.

missioners of Customs for the landing of officers from such ships, or for further examination previous to such departure, the master of such ship shall forfeit the sum of twenty pounds; and if any ship shall depart from any port with any Customs or other Government officer on board, without the consent of such officer, the master shall forfeit one hundred pounds.

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Carrying away officers, penalty £100.

137. The time at which any goods, unless prohibited as hereinafter mentioned, shall be shipped on board any export ship shall be deemed to be the time of exportation of such goods, and the time of the last clearance of any ship shall be deemed to be the time of departure of such ship, except as to any goods prohibited to be exported as contraband of war, with reference to which the exportation shall be deemed to be the actual time of the ship's departure on her outward voyage.

Time of exportation and departure defined.

Special Prohibitions and Restrictions.

§ 768. By the Customs and Inland Revenue Act, 1879 :(*y*)

8. The following goods may, by proclamation or Order in Council, be prohibited either to be exported or carried coastwise: arms, ammunition, and gunpowder, military and naval stores, and any articles which her Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions, or any sort of victual which may be used as food for man, and if any goods so prohibited shall be exported or brought to any quay or other place to be shipped for exportation from the United Kingdom or carried coastwise, or be water-borne to be so exported or carried, they shall be forfeited, and the exporter or his agent or the shipper of any such goods shall be liable to the penalty of one hundred pounds.

Goods prohibited by proclamation.

Penalty £100.

By the Customs Consolidation Act, 1876 :(*z*)

139. The Commissioners of Customs may, by order under their hands, require due entry and clearance before shipment, and in such manner as they may direct, of any goods intended for exportation or carriage coastwise, on being satisfied that the public interests render such course expedient, and if upon such entry the goods shall not be found to correspond with the particulars contained therein, they may be detained until the cause be explained to the satisfaction of the Commissioners of Customs, who may thereupon restore the same on such terms as they may see fit; and any exporter and shipper of any cask or package, containing any explosives as defined by "The Explosives Acts, 1875,"(*zz*) or by any Order in Council made pursuant thereto, shall duly enter the same before shipment thereof, and in the entry outwards or coastwise thereof shall correctly describe such explosive according to such definition; and if he shall fail or neglect to make such entry, or if the same be false in any particular, he shall forfeit the sum of one hundred pounds, and such cask or package, and the contents thereof, shall also be forfeited.

In case of public emergency, &c., pre-entry of export or coastwise goods may be required.

AS TO COASTING TRADE.

§ 769. 140. All trade by sea from any one part of the United Kingdom to any other part thereof shall be deemed to be a coasting trade, and all ships while employed therein shall be deemed to be coasting ships, and no part of the United Kingdom, however situated with regard to any other part, shall be deemed in law, with reference to each other, to be parts beyond the seas; and if any doubt shall at any time

COASTING TRADE. All trade by sea from part of the United Kingdom to another to be deemed coastwise,

(*y*) 42 & 43 Vict. c. 21.
(*z*) 39 & 40 Vict. c. 36.
(*zz*) 38 Vict. c. 17, s. 3, *ante* § 258 (*x*).

COASTING TRADE.

and no part to be deemed beyond the sea.

arise as to what or to or from what parts of the coast of the United Kingdom shall be deemed a passage by sea, the Commissioners of the Treasury may determine and direct in what cases the trade by water from one port or place in the United Kingdom to another of the same shall or shall not be deemed a trade by sea within the meaning of this or any Act relating to the Customs.

Foreign ships in coasting trade subject to same rules as British ships.

141. Every foreign ship proceeding either with cargo or passengers or in ballast on any voyage from one part of the United Kingdom to another, or from the Islands of Guernsey, Jersey, Alderney, Sark, or Man to the United Kingdom, or from the United Kingdom to any of the said islands, or from any of the said islands to any other of them, or from any part of any of the said islands to any other part of the same, shall be subject, as to stores for the use of the crew and in all other respects, to the same laws, rules, and regulations to which British ships when so employed are now subject; but no such foreign ship nor any goods carried therein shall, during the time she is so employed, be subject to any higher or other rate of dock, pier, harbour, light, pilotage, tonnage, or other dues, duties, tolls, rates, or other charges whatsoever, or to any other rules as to the employment of pilots, or any other rules or restrictions whatsoever, than British ships employed in like manner or goods carried therein, any law, charter, special privilege, or grant to the contrary notwithstanding; nor shall any body corporate or person having or claiming any right or title to any such higher or other rates, dues, duties, tolls, or other charges as aforesaid, be entitled to any compensation in respect thereof under any law or statute relating thereto, or otherwise howsoever.

Foreign ships employed in the coasting trade not to be subject to higher rates than British ships.

Coasting ships confined to coasting voyage.

142.(*a*) No goods shall be carried in any coasting ship, except such as shall be laden to be carried coastwise at some port or place in the United Kingdom, ... and if any goods shall be taken into or put out of any coasting ship at sea or over the sea, or if any coasting ship shall touch at any place over the sea, or deviate from her voyage, unless forced by unavoidable circumstances, or if the master of any coasting ship which shall have touched at any place over the sea shall not declare the same in writing under his hand to the collector or other proper officer at the port in the United Kingdom where such ship shall afterwards first arrive, the master of such ship shall forfeit the sum of one hundred pounds.

Penalty £100.

By the Revenue Act, 1884:(*b*)

Vessels with inward cargo for more than one port may convey certain goods coastwise.

2. (1) (*c*) Notwithstanding any provisions in the Customs Acts to the contrary it shall be lawful, on the arrival from parts beyond the seas of any ship, having on board cargo intended to be delivered at more than one port in the United Kingdom, to permit such ship to convey goods . . . . from any port at which such ship shall partially discharge her cargo to her port or ports of destination in the United Kingdom for delivery there, upon the complete separation of such goods from the inward cargo still on board being effected to the satisfaction of the collector or other proper officer at the port: Provided that such conveyance of goods from one port to another shall not constitute the ship a coasting ship within the meaning of the Customs Acts. The lading, unlading, and conveyance of goods under this section shall be subject to such regulations as the Commissioners of Customs may from time to time prescribe, and in case any goods shall be laden, unladen, conveyed,

(*a*) This section is printed as amended by 47 & 48 Vict. c. 62, s. 2.

(*b*) 47 & 48 Vict. c. 62.

(*c*) This section is printed as amended by 52 & 53 Vict. c. 42, s. 5 (2).

or dealt with contrary to such regulations, the goods shall be forfeited and the master of the ship shall forfeit the sum of twenty pounds.

COASTING TRADE. Penalty £20.

By the Customs and Inland Revenue Act, 1881 :(*d*)

10. If any goods shall be unshipped from any ship arriving coastwise, or be shipped or waterborne to be shipped for carriage coastwise on Sundays or holidays, except by the special permission of the Commissioners of Customs, or on any other day unless in the presence or with the authority of the proper officer of Customs, or unless at such times and places as shall be appointed or approved by him for that purpose, the same shall be forfeited, and the master of the ship shall forfeit the penalty of fifty pounds.

Time and places for landing and shipping coastwise.

By the Customs and Inland Revenue Act, 1879 :(*e*)

9. The master of every coasting ship shall keep or cause to be kept a cargo-book, stating the names of the ship, the master, and the port to which she belongs and of the port to which she is bound on each voyage, and unless the Commissioners of Customs otherwise direct, shall at every port of lading enter in such book the name of such port, and an account of all goods there taken on board such ship, stating the descriptions of the packages and the quantities and descriptions of the goods therein, and the quantities and descriptions of any goods stowed loose, and the names of the respective shippers and consignees, so far as such particulars are known to him, and shall at every port of discharge of such goods, note the respective days on which the same or any of them are delivered out of such ship, and the respective times of departure from every port of lading and of arrival at every port of discharge; and such master shall, on demand, produce such book for the inspection of any officer of Customs, who shall be at liberty to make any note or remark therein; and if upon examination any package entered in the cargo-book as containing foreign goods shall be found not to contain such goods, such package with its contents shall be forfeited, or if any package shall be found to contain foreign goods not entered in such book, such goods shall be forfeited; and if such master shall fail correctly to keep such cargo-book or to produce the same, or if at any time there be found on board such ship any goods not entered in such book as laden or any goods noted as delivered, or if any goods entered as laden or any goods not noted as delivered be not on board, the master of such ship shall forfeit the sum of twenty pounds.

Master of coasting vessel to keep a cargo-book.

Penalty for false entries in such book.

By the Customs Consolidation Act, 1876 :(*f*)

145. Before any coasting ship shall depart from her port or place of lading, an account, with a duplicate thereof, in the form No. 11 in Schedule B. to this Act,(*ff*) and containing the several particulars indicated in or required thereby, and signed by the master, shall be delivered to the collector or other proper officer, who shall retain the duplicate, and return the original, dated and signed by him; and such account shall be the clearance of the ship for the voyage, and the transire or pass for the goods expressed therein; and if the master shall fail to deliver a correct account he shall forfeit a sum of twenty pounds; provided that the Commissioners of the Customs may, when deemed by them expedient, permit general transires to be given, under such regulations as

Account previous to departure to be delivered to collector in the Form No. 11 in Schedule B.

Commissioners may grant general transires.

(*d*) 44 Vict. c. 12.
(*e*) 42 & 43 Vict. c. 21.
(*f*) 39 & 40 Vict. c. 36.
(*ff*) See Appendix No. 16 (D).

COASTING TRADE.

they may direct, for the lading and clearance and for the entry and unlading of any coasting ship and goods, but the same may be revoked by notice in writing under the hand of the proper officer delivered to the master or owner of any ship or any of the crew on board.

Transire to be delivered in 24 hours after arrival.

Inland Revenue goods.

Goods from the Isle of Man.

146. Within twenty-four hours after the arrival of any coasting ship at the port or place of discharge, and before any goods be unladen, the transire, with the name of the place or wharf where the lading is to be discharged noted thereon, shall be delivered to the collector or other proper officer, who shall note thereon the date of delivery; and if any of the goods on board such ship be subject to any duty of excise, the same shall not be unladen without the authority or permission of the proper officer of excise; and if any goods on board any coasting ship arriving in Great Britain or Ireland from the Isle of Man shall be the growth or produce of that isle, or manufactures of that isle from materials the growth or produce thereof, or from materials not subject to duty in Great Britain or Ireland, or from materials upon which the duty shall have been paid and not drawn back in Great Britain or Ireland, the same shall not be unladen until a certificate(*g*) be produced to the collector or other proper officer from the collector or other proper officer at the port or place of shipment, that proof had there been made in manner required by law that such goods were of such growth, produce, or manufacture, as the case may be; and if any goods shall be unladen contrary hereto, the master shall forfeit the sum of twenty pounds; and if any goods shall be laden on board any ship and carried coastwise, or be brought to any port or place in the United Kingdom for that purpose, or having been brought coastwise shall be unladen in any such port or place contrary to the Customs Acts, such goods shall be forfeited.

Penalty for illegal unlading. Forfeiture of goods.

Officer may go on board and examine any coasting ship.

147. Any collector or other proper officer of Customs may go on board any coasting ship in any port or place in the United Kingdom, or at any period of her voyage, search such ship, and examine all goods on board, and all goods then lading or unlading, and demand all documents which ought to be on board such ship, and may require all or any such documents to be brought to him for inspection, and the master of any ship refusing to produce such documents on demand, or to bring the same to the collector or other proper officer when required, shall forfeit the sum of twenty pounds.

Goods brought coastwise may be entered outwards without landing.

148. If the master of any ship bringing any goods not liable to duty coastwise from one port of the United Kingdom to another shall desire to proceed with such goods or any of them to parts beyond the seas, he may, subject to such regulations as the Commissioners of Customs may see fit, enter such ship and goods outwards for the intended voyage without first landing the same.

BRITISH POSSESSIONS.

AS TO BRITISH POSSESSIONS.

Customs Acts to extend to British possessions abroad, except where otherwise provided for.

§ 770. 151. The Customs Act shall extend to and be of full force and effect in the several British possessions abroad, except where otherwise expressly provided for by the said Acts, or limited by express reference to the United Kingdom or the Channel Islands, and except also as to any such possession as shall by local Act or ordinance have provided, or may hereafter, with the sanction and approbation of her Majesty and her successors, make entire provision for the management and regulation

(*g*) Sect. 280 of the Act requires the collector to give the master a certificate on the written declaration of the shipper or his representative.

of the Customs of any such possession, or make in like manner express provisions in lieu or variation of any of the clauses of the said Act, for the purposes of such possession.

BRITISH POSSESSIONS.

154. The master of every ship arriving in the Channel Islands, whether laden or in ballast, shall come directly, and before bulk be broken, to the Custom House for the port or district where he arrives, and there make a report in writing to the proper officer of Customs, in the same form and manner as hereinbefore provided on the arrival of any ship in Great Britain or Ireland from parts beyond the seas, so far as the same may be applicable; and if any goods be unladen from any ship before such report be made, or if the master fail to make such report, or make an untrue report, or do not truly answer the questions demanded of him, he shall forfeit the sum of fifty pounds, and if any goods be not reported, such goods shall be forfeited.

Ship and cargo to be reported on arrival. Particulars of report.

Penalty for false report.

155. No goods shall be laden or waterborne to be laden on board any ship, or unladen from any ship, in the Channel Islands, until due entry shall have been made of such goods and warrant granted for the lading or unlading of the same; and no goods shall be so laden or waterborne or so unladen in the said Channel Islands except at some place at which an officer of the Customs is appointed to attend the lading and unlading of goods, or at some place for which a sufferance shall be granted by the proper officer of Customs for the lading and unlading of such goods, and in the presence or with the permission of such officer; but the Commissioners of Customs may make such regulations for the carrying coastwise of any goods, or for the removing of any goods for shipment in the said islands, as to them shall appear expedient; and all goods laden, waterborne, or unladen contrary hereto, or to any regulations to be so made, shall be forfeited.

Entry of goods to be laden or unladen. Regulations inwards and outwards.

Regulations coastwise.

Forfeiture.

156. Any goods of the growth of the Channel Islands, and any goods manufactured in the said islands from materials of the growth of the said islands, or from materials not subject to duty in Great Britain or Ireland, or from materials upon which the duty has been paid in Great Britain or Ireland, and upon which no drawback has subsequently been granted, may be imported into Great Britain or Ireland from the said islands respectively without payment of any duty, and such goods shall not be deemed to be included in any charge of duties imposed by any Act on the importation of goods generally from parts beyond the seas, except as hereinafter provided; and any person who is about to export from the Channel Islands to Great Britain or Ireland any such goods may go before a magistrate of such islands and make and sign before him a declaration that such goods, stating the quantity, quality, and description thereof, and the number and denomination of the packages containing the same, are of such growth or produce or of such manufacture, and such magistrate shall administer and sign such declaration; and thereupon the governor, lieutenant-governor, or other proper authority of the island from which the goods are to be exported, shall, upon the delivery to him of such declaration, grant a certificate under his hand of the proof contained in such declaration, stating the ship in which and the port to which the goods are to be exported; and such certificate shall be the proper document to be produced at such port in proof that the goods mentioned therein are of the growth, produce, or manufacture of such island respectively, and before any such goods shall be admitted to entry at any port in Great Britain or Ireland as being the produce of the said islands (if any benefit attach to such distinction), the master of the ship importing the same shall deliver such certificate to the collector or other proper officer; Provided always,

Goods grown or manufactured in Channel Islands.

Duty free.

Master to deliver certificate of produce.

British Possessions.

that such goods shall be charged with any proportion of such duties as shall fairly countervail any duties of excise payable on the like goods the produce or manufacture of the part of Great Britain or Ireland into which they shall be imported, or payable upon any of the materials from which such goods are manufactured; and all goods manufactured in any of the said islands from any other materials than the materials aforesaid shall be declared and taken to be foreign goods.

Prohibited goods not to be shipped from the Channel Islands to the United Kingdom.

157. If in the Channel Islands any goods, the importation whereof into the United Kingdom is prohibited, or any goods in any packages or in any manner in which the same cannot be legally imported into the United Kingdom, shall be found concealed or prepared for shipment, or be shipped, removed, or brought to any wharf, quay, or other place in the said islands, or be water-borne to be shipped on board any ship without the authority of the proper officers of Customs of the said islands, such goods shall be forfeited, and any person who shall so ship, bring, or water-bear to be shipped any such goods, or be otherwise knowingly concerned therein, or in whose custody or possession the same shall be found, shall forfeit the sum of one hundred pounds, or treble the value of the goods, at the election of the Commissioners of Customs.

Penalty.

Ships not to sail from Channel Islands without clearance.

158. No ship or boat belonging wholly or in part to her Majesty's subjects shall sail from the Channel Islands without a clearance, whether in ballast or having a cargo; and if with cargo, the master shall give bond to her Majesty in double the value of such cargo for the due landing thereof at the port for which such ship or boat clears; and shall truly answer such questions as may be put to him by the principal or other proper officer of Customs touching such ship and her intended voyage; and every such ship or boat not having such clearance, or which, having a clearance for her cargo, shall be found light, or to have discharged any part of her cargo before arrival at the port or place of discharge specified in the clearance, shall be forfeited; and the master of every ship so departing without clearance, or refusing to answer or not answering truly any such questions, or discharging any part of the cargo of such ship before arrival at her port or place of discharge, shall forfeit the sum of fifty pounds.

Penalty.

Stores for vessels departing from the Channel Islands.

159. The Commissioners of Customs may from time to time establish regulations as to the quantities, custody, and disposal of tobacco, spirits, and tea to be used as stores by the master, crew, and passengers of any vessel about to depart from the Channel Islands to any port in the United Kingdom, or to any fishing grounds at sea, having regard to the time that will be occupied in the contemplated voyage, the tonnage of the vessel, and the number of her crew and passengers, the particulars of such stores to be noted on the clearance of the vessel; and if they or any part thereof be landed in the United Kingdom from the said vessel contrary to the regulations so established, or without the knowledge or permission of the proper officer of the Customs, they shall be forfeited, and the master of such vessel shall, on proof of any such landing or unshipment, forfeit the penalty of twenty pounds, and if any stores in excess of the quantity allowed by such regulations be found on board any ship so about to depart, they shall be forfeited.

Penalty.

Colonial laws repugnant to Acts of Parliament void.

161. All laws, bye-laws, usages, or customs at this time, or which hereafter shall be in practice, or endeavoured or pretended to be in force or practice, in any of the British possessions, which are in anywise contrary to the Customs Acts, are and shall be null and void.

162. No spirits (except rum or British spirits) shall be imported into or exported from the Channel Islands or any of them, or be removed from any one to any other of the said islands, or be carried coastwise

from any one part to any other part of any one of the said islands, or shall be shipped in order to be so removed or carried in any ship other than of the burden of forty tons or upwards, or in any cask or other vessel capable of containing liquids not being of the size or content of twenty gallons at the least if foreign, or nine gallons at the least if British or Irish; and all spirits imported, exported, removed, carried, shipped, or water-borne to be so shipped, removed, or carried contrary hereto, shall be forfeited, together with the ship, and any boat importing, exporting, removing, or carrying the same: Provided always, that nothing herein contained shall extend to any spirits imported in any such ship in glass bottles as part of the cargo, nor to any spirits being really intended for the consumption of the seamen and passengers of such ship during their voyage and not being more in quantity than is necessary for that purpose, nor to any boat of less burden than ten tons for having on board at any one time any foreign spirits of the quantity of ten gallons or under, such boat having a licence from the proper officer of Customs at either of the islands of Guernsey or Jersey for the purpose, being employed in carrying commodities for the supply of the island of Sark, which licence such officer is hereby required to grant without fee or reward; but if any such boat shall have on board at any one time any greater quantity of spirits than ten gallons, unless in casks or packages of the size and content of twenty gallons at the least if foreign, or nine gallons at the least if British or Irish, such spirits and boats shall be forfeited.

British Possessions.

As to importing and exporting spirits into and from Channel Islands in ships of 40 tons and upwards.

Not to extend to spirits in glass bottles, stores, certain warehoused goods, nor to licensed boats supplying Sark.

163. No tobacco, cigars, or snuff shall be imported into the Channel Islands, nor be carried from any one of the said islands to another of them, or from one part of any of the said islands to another part of the same, unless in ships of not less burden than forty tons, nor unless in packages each containing not less than eighty pounds net weight of such tobacco, cigars, or snuff, nor unless the provisions in and under which the like sort of goods may be legally imported into the United Kingdom are complied with; and all tobacco, cigars, or snuff imported into the said islands, or found, carried, shipped, or removed contrary hereto, or which shall be found or discovered to have been on board any ship or boat within one league of the coasts thereof, shall be forfeited, together with the ship or boat.

Provision as to importation of tobacco, &c., into Channel Islands.

As to making and signing False Declarations relating to the Customs, falsely answering Questions, and counterfeiting Documents.

False Declarations.

§ 771. 168. If any person shall in any matter relating to the Customs or under the control or management of the Commissioners of Customs, make and subscribe, or cause to be made and subscribed, any false declaration, or make or sign any declaration, certificate, or other instrument required to be verified by signature only, the same being false in any particular, or if any person shall make or sign any declaration made for the consideration of the Commissioners of Customs on any application presented to them, the same being untrue in any particular, or if any person required by this or any other Act relating to the Customs to answer questions put to him by the officers of Customs, shall not truly answer such questions, or if any person shall counterfeit, falsify, or wilfully use when counterfeited or falsified, any document required by this or any Act relating to the Customs or by or under the directions of the Commissioners of Customs, or any instrument used in the transaction of any business or matter relating to the Customs, or shall alter any document or instrument after the same has been

Penalty on making false declarations, signing false documents, and untruly answering questions, and counterfeiting and using false documents.

False Declarations.

officially issued, or counterfeit the seal, signature, initials, or other mark of or used by any officer of the Customs for the verification of any such document or instrument, or for the security of goods, or any other purpose in the conduct of business relating to the Customs or under the control or management of the Commissioners of Customs or their officers, every person so offending shall for every such offence forfeit the penalty of one hundred pounds.

Smuggling.

As to Smuggling.

§ 772. The provisions against smuggling are minute and comprehensive, and are enforced by penalties of a most stringent nature:

Vessels made use of in removal of uncustomed or prohibited goods forfeited.

172. If any vessel or boat shall be used in the importation, landing, removal, carriage, or conveyance of any uncustomed or prohibited goods, the same shall be forfeited, and the owner and the master of every such vessel or boat shall each forfeit and pay a penalty equal to the value of such vessel or boat, not in any case exceeding five hundred pounds.

Boats of vessel to have thereon the name of vessel, port, and master.

175. The owner of every ship belonging wholly or in part to any of her Majesty's subjects shall paint or cause to be painted upon the outside of the stern of every boat belonging to such ship the name of such ship and the port or place to which she belongs, and the master's name withinside the transom, in white or yellow Roman letters, not less than two inches in length, on a black ground, on pain of the forfeiture of every such boat not so marked, wherever the same shall be found.

Boats not belonging to ships to have name of owner and port thereon.

176. The owner of every vessel or boat, whether decked, partially decked, or open, not being of the burden of one hundred tons, and not belonging to any ship, shall paint or cause to be painted upon the outside of the stern of such boat, in white or yellow Roman letters, of not less than two inches in length, on a black ground, the name of the owner of the boat and the port or place to which she belongs, on pain of the forfeiture of such boat not so marked, wherever the same shall be found.

Goods unshipped without payment of duty and prohibited goods liable to forfeiture.

177. If any goods liable to the payment of duties shall be unshipped from any ship or boat in the United Kingdom (Customs or other duties not being first paid or secured), or if any prohibited goods whatsoever shall be imported or brought into any part of the United Kingdom; or if any goods shall be removed from any ship, quay, wharf, or other place, previously to the examination thereof by the proper officer of Customs, or being entered to be warehoused, shall be carried into the warehouse, unless under the care or authority of such officer and in such manner and by such roads or ways and within such time as he shall direct; or if any goods entered to be warehoused, after the landing thereof, shall be removed or withdrawn from any quay, wharf, or other place in the United Kingdom, so that no sufficient account is taken thereof by the proper officer, or so that the same are not duly warehoused; or if any goods whatever which shall have been warehoused or otherwise secured in the United Kingdom, either for home consumption or exportation, or shall have been delivered from any warehouse or other place without payment of duty for removal to any other warehouse or place, shall be clandestinely or illegally removed from or out of any warehouse or place of security, or shall not be duly delivered at the place at which such goods were destined to be removed; or if any goods which are prohibited to be exported shall be put on board any ship or boat with intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or

Goods illegally removed from warehouse.

SMUGGLING.

other place in the United Kingdom in order to be put on board any ship for the purpose of being exported; or if any goods which are prohibited to be exported shall be found in any package produced to any officer of Customs as containing goods not so prohibited; or if any goods subject to any duty or restriction in respect of importation, or which are prohibited to be imported into the United Kingdom, shall be found or discovered to have been concealed in any manner on board any ship or boat within the limits of any port of the United Kingdom, or shall be found either before or after landing to have been concealed in any manner on board any such ship or boat, within such limits as aforesaid; then and in every of the foregoing cases all such goods shall be forfeited, together with any goods which shall be found packed with or used in concealing them.

Prohibited goods shipped or water-borne with intent to be exported, &c. Goods concealed on board, and goods packed therewith, forfeited.

179.(*h*) If any ship or boat shall be found or discovered to have been within any port, bay, harbour, river, or creek of the United Kingdom or the Channel Islands, or within three leagues of the coast thereof, if belonging wholly or in part to British subjects, or having half the persons on board subjects of her Majesty, or within one league if not British, having false bulkheads, false bows, double sides or bottom, or any secret or disguised place adapted for concealing goods, or any hole, tube, pipe, or device adapted for running goods, or having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner any spirits, tobacco, or snuff, in packages of any size and character in which they are prohibited to be imported into the United Kingdom or the Channel Islands, or any spirits or tobacco or snuff imported contrary to the Customs Acts, or any tobacco stalks, tobacco stalk flour, or snuff work, or which shall be found or discovered to have been within three leagues of any part of the coast of the United Kingdom from which any part of the lading of such ship or boat shall be or have been thrown overboard, or on board which any goods shall be or have been staved or destroyed to prevent seizure, every such ship or boat, together with any such spirits, tobacco, or snuff, tobacco stalks, tobacco stalk flour, or snuff work, and all packages, casks, or other vessels containing the same, and everything packed therein, and also any cordage or other articles adapted and prepared for slinging or sinking small casks, or any casks or other vessels whatsoever of less size or content than twenty gallons of the description used for the smuggling of spirits found on board, shall be forfeited;(*hh*) and every person who shall be found or discovered to have been on board any ship or boat liable to forfeiture as aforesaid, within three leagues of the coast if a British subject, or within one league if a foreigner, or on board any vessel in her Majesty's service, or on board any foreign post office packet employed in carrying mails between any foreign country and the United Kingdom, having on board any spirits or tobacco in such packages as aforesaid, or any tobacco stalks, tobacco stalk flour, or snuff work, shall forfeit a sum not exceeding one hundred pounds; and every such person may be detained and taken before any justice, to be dealt with as hereinafter directed; provided that no person shall be detained whilst actually on board any vessel in the service of a foreign state or country. [And provided also, that no person shall be liable to conviction under this section unless there shall be reasonable cause to believe that such person was concerned in, or privy to, the illegal act or thing proved to have been committed.]

Any vessel or boat arriving within the United Kingdom or the Channel Islands, or within three leagues thereof, having prohibited goods on board or attached thereto, forfeited. Prohibited goods shipped or water-borne with intent to be exported, &c.

Persons found or discovered to have been on board vessels with contraband goods may be detained.

(*h*) This section is printed as amended by 50 Vict. c. 7, s. 1.

(*hh*) But see 53 & 54 Vict. c. 56, ss. 1, 2, 4, *post* § 773.

SMUGGLING.

§ 773. By the Customs Consolidation Act, 1876, Amendment Act, 1890 :(*i*)

No ship to be liable to forfeiture unless under 250 tons burden.

1. No ship or boat shall be liable to forfeiture under the said section (*ii*) for having or having had on board, or in any manner attached thereto, or conveying or having conveyed, any goods as therein specified, or for any unlading, throwing overboard, or destruction of goods, unless such ship or boat shall be under two hundred and fifty tons burden.

Provisions as to ship of or exceeding 250 tons burden.

2. With regard to any ship or boat of or exceeding two hundred and fifty tons burden which but for this Act would be liable to forfeiture as aforesaid, the following provisions shall apply :—

(a) It shall be lawful for the Commissioners of Customs, hereinafter called "the Commissioners," subject to appeal to the Lords Commissioners of the Treasury, to have power to fine any such ship or boat in any sum not exceeding fifty pounds in any case where in their opinion a responsible officer (as hereinafter defined) of such ship or boat is implicated either actually or by neglect :

(b) For the purpose of enforcing such fine the Commissioners shall have power to require the deposit in the hands of the Collector of Customs at the port where such ship or boat shall be of such sum, not exceeding fifty pounds, as they may think right, pending their ultimate decision, and in default of payment of such deposit the Commissioners shall have power to detain the said ship or boat :

(c) If in any case the Commissioners shall consider that the fine of fifty pounds aforesaid will not be an adequate penalty against any such ship or boat for the offence committed thereon, it shall be lawful for them to take proceedings before the justices of the peace for condemnation of the said ship or boat in a sum not exceeding five hundred pounds at the discretion of such justices, or such proceedings may be taken by the Commissioners before the courts and in manner prescribed by the Customs Consolidation Act, 1876, (*j*) and the Acts amending the same. And for this purpose the Commissioners may as to any ship or boat referred to in this section require the deposit in the hands of the collector as aforesaid of a sum not exceeding five hundred pounds, to abide the decision of the Court, and in default of payment of such deposit the Commissioners may detain such ship or boat :

(d) No claim shall be made against the Commissioners for damages in respect of the payment of any deposit or the detention of any ship or boat under this section.

Definitions.

3. The expression "responsible officer" in this Act shall mean and include the master, mates, and engineers of any ship, and in the case of a ship carrying a passenger certificate the purser or chief steward, and where the ship is manned by Asiatic seamen the serang or other leading Asiatic officer. The expression "neglect" in this Act shall include cases where goods unowned by any of the crew are discovered in a place or places in which they could not reasonably have been put if the responsible officer or officers having supervision of such place or places had exercised proper care at the time of the loading of the ship

(*i*) 53 & 54 Vict. c. 56.

(*ii*) 39 & 40 Vict. c. 36, s. 179, *ante* § 772.

(*j*) See 39 & 40 Vict. c. 36, ss. 219–274 ; 40 & 41 Vict. c. 13, s. 4 ; 42 & 43 Vict. c. 21, ss. 11, 12 ; 46 & 47 Vict. c. 55, s. 19.

or subsequently; and the expression "burden" in this Act shall mean the same as it does in the Customs Consolidation Act, 1876—that is to say, "registered tonnage."

Saving of existing provision as to goods and persons on board.

4. For the purpose of the forfeiture under the said one hundred and seventy-ninth section of goods, packages, casks, and the like, and the detaining and dealing with persons found or discovered to have been on board any ship or boat liable to forfeiture by the said section (as amended by the Customs Consolidation Act, 1876, Amendment Act, 1887), ships or boats of or exceeding two hundred and fifty tons burden shall still be deemed, but for such purpose only, to be ships or boats liable to forfeiture by the said section.

§ 774. By the Customs Consolidation Act, 1876 :(*k*)

Ships belonging to Her Majesty's subjects, &c., throwing overboard any goods during chase forfeited, and persons escaping deemed British subjects.

180. If any ship or boat belonging wholly or in part to her Majesty's subjects, or having one half of the persons on board subjects of her Majesty, shall not bring to upon signal made by any vessel or boat in her Majesty's service or in the service of the Revenue, by hoisting the proper pendant and ensign, whereupon chase shall be given, and any person on board such ship or boat shall, during chase or before such ship or boat shall bring to, throw overboard any part of her lading, or shall stave or destroy any part thereof to prevent seizure, such ship or boat shall be forfeited; and all persons escaping from any such ship or boat during chase shall be deemed subjects of her Majesty, unless the contrary be proved.

Ships not bringing to when required to, penalty £20.

181. If any ship or boat liable to seizure or examination under the Customs Act shall not bring to when required so to do, the master of such ship or boat shall forfeit the sum of twenty pounds; and on such ship or boat being chased by any vessel or boat in her Majesty's Navy, having the proper pendant and ensign of her Majesty's ships hoisted, or by any vessel or boat duly employed for the prevention of smuggling, having a proper pendant and ensign hoisted, it shall be lawful for the captain, master, or other person having the charge or command of such vessel or boat in her Majesty's Navy, or employed as aforesaid (first causing a gun to be fired as a signal), to fire at or into such ship or boat, and such captain, master, or other person acting in his aid or by his direction shall be and is hereby indemnified and discharged from any indictment, penalty, action, or other proceeding for so doing.

Not bringing to, may be fired into.

Ships may be searched within the limits of the ports.

182. Any officer of Customs or other person duly employed for the prevention of smuggling may go on board any ship or boat which shall be within the limits of any port of the United Kingdom or the Channel Islands, and rummage and search the cabin and all other parts of such ship or boat for prohibited or uncustomed goods, and remain on board such ship or boat so long as she shall continue within the limits of such port.

Ships in port with a cargo, and afterwards found light or in ballast, and cargo unaccounted for, forfeited.

183. If any ship or boat whatever shall be found within the limits of any port of the United Kingdom with a cargo on board, and such ship or boat shall afterwards be found light or in ballast, and the master is unable to give a due account of the port or place within the United Kingdom where such ship or boat shall have legally discharged her cargo, such ship or boat shall be forfeited.

§ 775. By the Customs and Inland Revenue Act, 1881 :(*l*)

Persons may be searched if officers have reason

12. Any officer of Customs or other person duly employed in the prevention of smuggling may search any person on board any ship or boat within the limits of any port in the United Kingdom or the Channel

(*k*) 39 & 40 Vict. c. 36. (*l*) 44 Vict. c. 12.

SMUGGLING.

Islands, or any person who shall have landed from any ship or boat, provided such officer or other person duly employed as aforesaid shall have good reason to suppose that such person is carrying or has any uncustomed or prohibited goods about his person.

to suspect smuggled goods are concealed upon them.

A person shall be guilty of an offence—

Rescuing goods.

(1) If he staves, breaks, or destroys any goods to prevent the seizure thereof by an officer of Customs or other person authorized to seize the same.

(2) If he rescues, or staves, breaks or destroys, to prevent the securing thereof, any goods seized by an officer of Customs or other person authorized to seize the same.

Rescuing persons.

(3) If he rescues any person apprehended for any offence punishable by fine or imprisonment under the Customs Acts.

(4) If he prevents the apprehension of any such person.

Assaulting or obstructing officers.

(5) If he assaults or obstructs any officer of Customs, or any officer of the Army, Navy, Marines, Coastguard, or other person duly employed for the prevention of smuggling, going, remaining, or returning from on board a ship or boat within the limits of any port in the United Kingdom or the Channel Islands, or in searching such a ship or boat, or in searching a person who has landed from any such ship or boat, or in seizing any goods liable to forfeiture under the Customs Acts, or otherwise acting in the execution of his duty.

Attempting the foregoing offences.

(6) If he attempts or endeavours to commit, or aids, abets, or assists in the commission, of any of the offences mentioned in this section.

Penalty.

And a person so offending shall for each such offence forfeit the penalty of not exceeding one hundred pounds, and he may either be detained or proceeded against by information and summons.

By the Customs Consolidation Act, 1876 :(*m*)

Persons before search may require to be taken before a justice or officer of Customs.

185. Before any person shall be searched he may require to be taken with all reasonable despatch before a justice, or before the collector or other superior officer of Customs, who shall, if he see no reasonable cause for search, discharge such person, but if otherwise, direct that he be searched, and if a female she shall not be searched by any other than a female; but if any officer shall without reasonable ground cause any person to be searched, such officer shall forfeit and pay a sum not exceeding ten pounds. If any passenger or other person on board any such ship or boat, or who may have landed from any such ship or boat, shall, upon being questioned by any officer of Customs or other person duly employed for the prevention of smuggling, whether he has any foreign goods upon his person or in his possession or in his baggage, deny the same, and any such goods shall after such denial be discovered to be or to have been upon his person or in his possession or in his baggage, such goods shall be forfeited, and such person shall forfeit one hundred pounds, or treble the value of such goods, at the election of the Commissioners of Customs.

Penalty on officers for misconduct.

Penalty on persons denying having foreign goods about them.

Illegally importing.

§ 776. 186. Every person who shall import or bring, or be concerned in importing or bringing into the United Kingdom any prohibited goods or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unshipped or not; or shall unship, or assist or be otherwise concerned in the unshipping of any goods which are prohibited, or of any goods which

Unshipping.

(*m*) 39 & 40 Vict. c. 36.

are restricted and imported contrary to such restriction, or of any goods liable to duty, the duties for which have not been paid or secured; or shall deliver, remove, or withdraw from any ship, quay, wharf, or other place previous to the examination thereof by the proper officer of Customs, unless under the care or authority of such officer, any goods imported into the United Kingdom or any goods entered to be warehoused after the landing thereof, so that no sufficient account is taken thereof by the proper officer, or so that the same are not duly warehoused; or shall carry into the warehouse any goods entered to be warehoused or to be re-warehoused, except with the authority or under the care of the proper officer of the Customs, and in such manner, by such persons, within such time, and by such roads or ways as such officer shall direct; or shall assist or be otherwise concerned in the illegal removal or withdrawal of any goods from any warehouse or place of security in which they shall have been deposited; or shall knowingly harbour, keep, or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept, or concealed, any prohibited, restricted, or uncustomed goods, or any goods which shall have been illegally removed without payment of duty from any warehouse or place of security in which they may have been deposited; or shall knowingly acquire possession of any such goods; or shall be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any such goods with intent to defraud her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods; or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duties of Customs, or of the laws and restrictions of the Customs relating to the importation, unshipping, landing, and delivery of goods, or otherwise contrary to the Customs Acts; shall for each such offence forfeit either treble the value of the goods including the duty payable thereon, or one hundred pounds, at the election of the Commissioners of Customs; and the offender may either be detained or proceeded against by summons.

SMUGGLING.

Removing from quay, wharf, &c.

Carrying goods into warehouse without authority.

Removing from warehouse.

Harbouring.

Carrying

Evading duties of Customs.

Penalty treble value, or £100.

By the Customs and Inland Revenue Act, 1879 :(*n*)

10. All persons to the number of three or more who shall assemble for the purpose of unshipping, landing, running, carrying, concealing, or having so assembled shall unship, land, run, carry, convey, or conceal any spirits, tobacco, or any prohibited, restricted, or uncustomed goods, shall each forfeit a penalty not exceeding five hundred pounds nor less than one hundred pounds.

Penalty for assembling to run goods.

By the Customs Consolidation Act, 1876 :(*o*)

189. Every person who shall by any means procure or hire, or shall depute or authorize any other person to procure or hire, any person or persons to assemble for the purpose of being concerned in the landing or unshipping, or carrying, conveying, or concealing any goods which are prohibited to be imported, or the duties for which have not been paid or secured, shall be imprisoned for any term not exceeding twelve months; and if any person engaged in the commission of any of the above offences be armed with fire-arms or other offensive weapons, or whether so armed or not be disguised in any way, or being so armed or disguised shall be found with any goods liable to forfeiture under the Customs Acts within five miles of the seacoast or of any tidal river,

Procuring or hiring persons to assemble to run goods.

Persons armed or disguised.

With goods within five miles of coast.

(*n*) 42 & 43 Vict. c. 21. (*o*) 39 & 40 Vict. c. 36.

SMUGGLING.

he shall be imprisoned with or without hard labour for any term not exceeding three years.

Only officers to take up spirits in casks sunk or floating upon the sea, and persons giving information may be rewarded.

§ 777. 200. If any person not being an officer of the Navy, Customs, or Excise shall intermeddle with or take up any spirits being in casks of less content than twenty gallons found floating upon or sunk in the sea, such spirits shall be forfeited, together with any vessel or boat in which they may be found; but if any person shall give information to any such officer so that seizure of such spirits may be made, he shall be entitled to such reward as the Commissioners of Customs may direct.

Ships, &c., used in the removal of raw goods to be forfeited. Ships, boats, &c., and persons may be detained.

202. All ships, boats, carriages, or other conveyances, together with all horses and other animals and things made use of in the importation, landing, removal, or conveyance of any uncustomed, prohibited, restricted, or other goods liable to forfeiture under the Customs Acts, shall be forfeited, and all ships, boats, goods, carriages, or other conveyances, together with all horses and other animals and things liable to forfeiture, and all persons liable to be detained for any offence under the Customs Acts, or any other Act whereby officers of Customs are authorized to seize or detain persons, goods, or other things, shall or may be seized or detained in any place either upon land or water by any of the following persons, being duly employed for the prevention of smuggling, that is to say, any officer of her Majesty's Army, Navy, Marines, Coastguard, Customs, or Excise, or by any person having authority from the Commissioners of Customs or Inland Revenue to seize, or by any constable or police officer of any county, city, or borough in the United Kingdom so employed with the sanction of the magistrates having jurisdiction therein, or under or by virtue of any Act in relation thereto; and all ships, boats, goods, carriages, or other conveyances, together with all horses and other animals and things so seized, shall forthwith be delivered into the care of the collector or other proper officer of Customs at the nearest Custom House; and the forfeiture of any ship, boat, carriage, animal, or other things shall be deemed to include the tackle, apparel, and furniture thereof, and the forfeiture of any goods shall be deemed to include the package in which the same are found and all the contents thereof.

Seizures to be taken to the nearest Custom House.

Notice to be given by seizing officer to owner of ships or goods seized, and seizures to be claimed within one month.

207. Whenever any seizure shall be made, unless in the possession or in the presence of the offender, master, or owner as forfeited under the Customs Acts or under any Act by which Customs officers are empowered to make seizures, the seizing officer shall give notice in writing of such seizure and of the grounds thereof to the master or owner of the things seized, if known, either by delivering the same to him personally or by letter addressed to him and transmitted by post to or delivered at his last known place of abode or business, if known; and all seizures made under the Customs Acts or under any Act by which Customs officers are empowered to make seizures shall be deemed and taken to be condemned, and may be sold or otherwise disposed of in such manner as the Commissioners of Customs may direct, unless the person from whom such seizure shall have been made, or the master or owner thereof, or some person authorized by him, shall, within one calendar month from the day of seizure, give notice in writing, if in London, to the person seizing the same, or to the secretary or solicitor for the Customs, and if elsewhere, to the person seizing the same, or to the collector or other chief officer of the Customs at the nearest port, that he claims the things so seized or intends to claim them, whereupon proceedings shall be taken for the forfeiture and condemnation thereof either by information filed in the Exchequer Division of the High Court of Justice in England on the Revenue side, or exhibited before any

justice of the peace; but if any things so seized shall be of a perishable nature, or consist of horses or other animals, the same may by direction of the Commissioners of Customs be sold, and the proceeds thereof retained to abide the result of any claim that may legally be made in respect thereof.

SMUGGLING.

Perishable goods, &c., may be sold.

AS TO QUARANTINE.(*p*)

QUARANTINE.

§ 778. With respect to Quarantine the Act provides:

234. It shall be lawful for her Majesty in Council, or any two of the Lords of her Majesty's Privy Council, from time to time, by her or their order, to require that no person on board any ship coming to any port in the United Kingdom, the Channel Islands, or the Isle of Man, from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper officer of Customs, at such place or places as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer, whether or not it shall on or after such examination be found expedient to order such vessel under the restraint of quarantine, and any person so quitting any such vessel shall forfeit a sum not exceeding one hundred pounds; and if the master, pilot, or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order, until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties, or either of them if incurred, and any penalty incurred under the Act of the sixth year of the reign of King George the Fourth, chapter seventy-eight, shall be subject to reduction to any sum not exceeding one hundred pounds, and may be recovered by information and summons before a stipendiary magistrate, or any two justices of the peace, who are hereby authorized to reduce the same accordingly, and to commit the offender to prison in default of payment of any penalty so imposed for any period not exceeding six months.

Persons arriving in ships from infected places not to land before examination.

(*p*) See also as to Quarantine, 6 Geo. IV. c. 78; 38 & 39 Vict. c. 55, s. 343, sch. 5, pt. III.; 54 & 55 Vict. c. 76, s. 142 (5); sch. 1.

APPENDICES.

APPENDICES.

No. 1 (see §§ 46, 56).

A.—The following Rules regulate the Procedure on Investigations into Shipping Casualties. See 39 and 40 Vic. c. 80.

GENERAL RULES FOR FORMAL INVESTIGATIONS INTO SHIPPING CASUALTIES. 1878.

1. These Rules may be cited as "The Shipping Casualties Rules, 1878." Short title.

2. These Rules shall come into operation on the 1st day of October, 1878. Commencement.

3. In the construction of these Rules the word "Judge" shall mean the Wreck Commissioner, Stipendiary Magistrate, Justices or other authority empowered to hold a formal investigation into a shipping casualty. Interpretation.

4. These Rules shall be published by her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so. Publication of rules.

5. When a formal investigation into a shipping casualty has been ordered, the Board of Trade may cause a notice, to be called a Notice of Investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who may appear to have in any way contributed to the casualty. Form of the Notice of Investigation will be found in the Appendix No. 1.(*a*) Notice of Investigation.

6. The Board of Trade and any certificated officer upon whom a Notice of Investigation has been served, shall be deemed to be parties to the proceedings. Parties.

7. Any other person upon whom a Notice of Investigation has been served, and any person who shows that he has an interest in the investigations, shall have a right to appear, and shall thereupon become a party to the proceedings.

8. Any other person may, by permission of the Judge, appear, and shall thereupon become a party to the proceedings.

9. A party may give to any other party notice in writing to produce any documents (saving all just exceptions) relating to the matters in difference between them, and which are in the possession or under the control of such other party; and if the notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice. Notice to produce.

10. A party may give to any other party notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, Notice to admit.

(*a*) *Infra*, p. 647.

except where the admission to give the notice has, in the opinion of the officer by whom the costs are taxed, been a saving of expense.

Witnesses.

11. The Wreck Commissioner may issue subpœnas for the attendance of witnesses either before himself or before any other Judge, and such subpœnas shall be as nearly as possible in the form used in the High Court of Justice, and may be served and shall have effect in any part of the United Kingdom.

Affidavits.

12. Affidavits may, by permission of the Judge, be used as evidence at the hearing, when sworn to in any of the following ways, viz.:

In the United Kingdom, before the Judge, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a Justice of the Peace for the county or place where it is sworn or made.

In any place in the British dominions, out of the United Kingdom, before any Court, Judge, or Justice of the Peace, or any person authorised to administer oaths in any Court in that place.

In any place out of the British dominions, before a British Minister, Consul, Vice-Consul, or Notary Public, or before a Judge or Magistrate, whose signature is authenticated by the official seal of the Court to which such Judge or Magistrate is attached.

Proceedings in Court.

13. At the time and place appointed for holding the investigation, the Court may proceed to hear and adjudicate upon the case, whether the parties, upon whom a Notice of Investigation has been served, or any of them, are present or not.

14. The Board of Trade shall first produce any witnesses whom they may wish to examine, and who can give material evidence in regard to the casualty, whether they were or were not on board the ship at the time.

15. The witnesses shall be cross-examined by the parties, in such order as the Judge may direct, and may be re-examined by the Board of Trade.

16. On the completion of their examination, the Board of Trade shall state in open Court upon what questions in reference to the causes of the casualty, and the conduct of any person connected therewith, they desire the opinion of the Court; and if any person whose conduct is in question is a certificated officer, they shall also state in open Court, whether in their opinion his certificate should be dealt with.

17. The Board of Trade and any other party may thereupon produce further witnesses, who shall be examined, cross-examined, and re-examined, in such order as the Judge may direct.

18. When the whole of the evidence is concluded, the parties shall be heard in such order as the Judge may direct, and the Board of Trade shall be heard in reply.

19. The Judge may adjourn the Court from time to time and from place to place, as he may think fit.

20. Except when the certificate of the officer is cancelled or suspended, in which case the decision shall always be given in open Court, the Judge may deliver the decision of the Court, either *vivâ voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

21. The Judge may, if he thinks fit, order the costs and expenses of the proceedings, or any part thereof, to be paid by either the Board of Trade or by any other party to the proceedings. Form of Order for payment of costs will be found in the Appendix No. 2.(*a*)

22. At the conclusion of the case the Judge shall report to the Board of Trade. Form of the Report will be found in the Appendix No. 3.(*b*)

23. In computing the number of days within which any act is to be done,

(*a*) See next page. (*b*) See page 648.

they shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also. Computation of time.

24. Any notice, summons, or other document issuing out of the Court may be served by post. Service of notices, &c.

25. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

26. The Shipping Casualties Rules, 1876, except as to the cases in which an Order for a Formal Investigation shall have been made previous to the 1st day of October, 1878, are hereby revoked. Repealing clause.

APPENDIX.

The following forms shall be used, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Judge shall be of opinion that the deviation was material. Forms.

No. 1.

Notice of Investigation.

To Master, Mate, Engineer, Owner, &c., of or belonging to the ship of .

I hereby give you notice that the Board of Trade have ordered a formal investigation to be held into the circumstances attending the _____

_____

_____

and that subjoined hereto is a copy of the report [*or* statement of the case], upon which the said investigation has been ordered. I further give you notice to produce to the Court [your Board of Trade Certificate, the Log Books of the vessel, and] any [other] documents relevant to this case which may be in your possession.

Dated this day of 18 .

_____ Solicitor, Board of Trade.

Copy report (or statement of case).

No. 2.

Order on a party for Payment of Costs of Investigation.

In the matter of a formal investigation held at on the [*here state all the days on which the Court sat*] days of before assisted by into the circumstances attending the

_____

_____

The Court orders—

(1) That *A.B.* of do pay to the Solicitor to the Board of Trade [the sum of pounds on account of] the expenses of this investigation.

or (2) that the Board of Trade do pay to *A.B.* of [the sum of pounds on account of] the expenses of this investigation.

Given under my hand this day of 18 .

_____ Judge.

No. 3.

Report of Court.

Forms.

In the matter of a formal investigation held at on the (*here state all the days on which the Court sat*) days of before assisted by into the circumstances attending the

_____

_____

The Court, having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds, for the reasons stated in the annex hereto, that the (*here state finding of the Court*).

Dated this day of 18 .

_____Judge.

We [*or* I] concur in the above report,

_____Assessor.

_____Assessor.

Annex to the Report.

(*here state fully the circumstances of the case, the opinion of the Court touching the causes of the casualty, and the conduct of any persons implicated therein, and whether the certificate of any officer is to be either suspended or cancelled, and if so, for what reasons.*)

B.—The following rules relate to the appointment and qualifications of nautical and engineering assessors:—

ADDITIONAL RULES AS TO INVESTIGATIONS INTO SHIPPING CASUALTIES. 1879.

These rules recite 39 & 40 Vict. c. 80, s. 30, and 42 & 43 Vict. c. 72, s. 3, and further recite that:

The Secretary of State has directed that the Assessors shall, so far as in his opinion circumstances permit, be taken in order of rotation within each class or sub-class, and has further directed that the assessors placed by him on the list of assessors on and after the 31st of March next shall be classified according to their qualifications, as follows:

QUALIFICATIONS.

CLASSES.

Class I.—Mercantile Marine Masters.

(a) Five years' service as a Master in the Merchant Service, of which two years must have been service in command of a sailing ship, with a certificate of competency.

(b) Five years' service as a Master in the Merchant Service, of which two years must have been service in command of a steamship, with a certificate of competency.

Class II.—Mercantile Marine Engineers.

Five years' service as an Engineer in the Merchant Service [and at the time of appointment holding(*a*)] a first-class certificate of competency.

Class III.—Royal Navy.

Rank of Admiral or Captain and three years' service in command of one of her Majesty's ships at sea, or rank of Staff Commander and three years' service in that rank in one of her Majesty's ships at sea.

Class IV.—Persons of Nautical, Engineering, or other special Skill or Knowledge.

(a) Such qualification as is in the opinion of the Secretary of State requisite for ordinary cases.

(b) Such qualification as is in the opinion of the Secretary of State requisite for special cases.

The rules proceed:

1. These Rules may be cited as "The Shipping Casualties Rules, 1879." Short title.

2. These Rules shall, subject as hereinafter mentioned, come into operation on the 24th day of December, 1879. Commencement.

3. These Rules shall be published by her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so. Publication of rules.

4. The power of appointing assessors for investigations into shipping casualties shall be vested in the Secretary of State. Appointment of assessors.

5. If any investigation involves, or appears likely to involve, the cancelling or suspension of the certificate of a Master, Mate, or Engineer, then, in order to satisfy the aforesaid statutory requirement of not less than two assessors having experience in the Merchant Service, there shall be appointed from the list not less than two assessors from Class I. and Class II., or from either of those classes.

6. Subject to any special appointment or appointments which the Secretary of State may think it expedient to make in any case where special circumstances appear to him to require a departure from these Rules (the requirements of Rule 5 being always complied with), Assessors shall be appointed as follows:

(1) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master or Mate, but not of an Engineer, at least two Assessors shall be appointed from Class I.

(2) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master or Mate of a sailing ship, one at least of the Assessors shall be appointed from sub-section (*a*) of Class I., and where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of a Master or Mate of a steamship, one at least of the Assessors shall be appointed from sub-section (*b*) of Class I.

(3) Where the investigation involves, or appears likely to involve, the cancelling or suspension of the Certificate of an Engineer, one at least of the Assessors shall be appointed from Class II.

7. The Board of Trade shall inform the Secretary of State when Assessors

(*a*) The words in brackets express the amendment affected by the Additional Rules of April 19, 1880.

are required, and shall state from which of the aforesaid classes Assessors ought, in their opinion, to be appointed, in order to give due effect to the aforesaid classification and these Rules; but the Board of Trade shall not request the appointment of any individual Assessor.

8. An appointment made by the Secretary of State of any Assessor or Assessors for an investigation shall not be open to question on the ground that it was not in accordance with these Rules, or does not give full effect to the requirements of these Rules.

9. Whereas it is necessary to make temporary provision for the appointment of Assessors until the classification referred to in these Rules can be effected: therefore Rules 5 to 7 (both inclusive) shall not come into operation until the 31st of March, 1880, and until those Rules come into operation the statutory requirements as to the appointment in certain cases of two Assessors having experience in the Merchant Service shall be deemed to be complied with by the appointment of persons who, in the existing list, appear as qualified by service in the Mercantile Navy.

Rule of Oct. 1880.

An additional Rule of October 30, 1880, restored to the list of Assessors certain persons who had been on the list immediately before March 31, 1880, but had been subsequently omitted therefrom.

C.—As to the following (Appeal and Rehearing) Rules, see 39 & 40 Vict. c. 80, and 42 & 43 Vict. c. 72.

ADDITIONAL RULES (APPEALS AND REHEARINGS) AS TO INVESTIGATIONS INTO SHIPPING CASUALTIES. 1880.

Short title.

1. These Rules may be cited as "The Shipping Casualties (Appeal and Rehearing) Rules, 1880."

Commencement.

2. These Rules shall come into operation on the 21st day of April, 1880.

Interpretation.

3. In the construction of these Rules the word "Judge" shall mean the Wreck Commissioner, Stipendiary Magistrate, Justices or other authority empowered to hold an investigation into the conduct of a master, mate, or engineer, or into a shipping casualty.

Publication of Rules.

4. These Rules shall be published by Her Majesty's Stationery Office, through its agents, and a copy shall be kept at every Custom House and Mercantile Marine Office in the United Kingdom, and any person desiring to peruse them there shall be entitled to do so.

Copy of report where certificate affected.

5. Where the certificate of a master, mate, or engineer has been cancelled or suspended, the Board of Trade shall, on application by any party to the proceedings, give him a copy of the report made to the Board.

Appeals.

6. Every appeal under section two of "The Shipping Casualties Investigations Act, 1879," shall be subject to the conditions and regulations following, namely:—

(a) The appellant shall, within seven days after the day on which the decision appealed against is pronounced, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal, notice of his intention to appeal, and shall also, within two days after the appeal is set down, serve on the said parties notice of the general grounds of the appeal.

(b) If the appeal is brought by any party other than the Board of Trade, the appellant shall give such security, if any, by deposit of money or otherwise, for the costs to be occasioned by the appeal, as the

Judge from whose decision the appeal is brought, on application made to him for that purpose, may direct. Appeals.

(c) The appellant shall, before the expiration of the time within which notice of appeal may be given, leave with the officer for the time being appointed for that purpose by the Court to which the appeal is brought (in these Rules referred to as the Court of Appeal) a copy of the notice of appeal, and the officer shall thereupon set down the appeal by entering it in the proper list.

(d) The Court of Appeal shall be assisted by not less than two Assessors, to be selected, in the discretion of the Court, having regard to the nature of each case, from either or both of the following classes:—

1. Elder Brethren of the Trinity House.
2. Persons approved from time to time by the Secretary of State as Assessors for the purpose of formal investigations into shipping casualties, under section thirty of the "Merchant Shipping Act, 1876," and sub-section one of section three of the "Shipping Casualties Investigations Act, 1879."

(e) The Court of Appeal may, if it thinks fit, order any other person or persons, body or bodies, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as to the Court of Appeal seems meet.

(f) Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary.

(g) The evidence taken before the Judge from whose decision the appeal is brought shall be proved before the Court of Appeal by a copy of the notes of the Judge, or of the shorthand writer, clerk, secretary, or other person authorised by him to take down the evidence, or by such other materials as the Court of Appeal thinks expedient; and a copy of the evidence, and of the report to the Board of Trade containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, shall be left with the officer for the time being appointed for that purpose by the Court of Appeal before the appeal comes on for hearing. For the purpose of this rule, copies of the notes of the evidence, and of the report, shall be supplied to the appellant, on request, by the Judge or other person having charge thereof, on payment of the usual charge for copying.

(h) The Court of Appeal shall have full power to receive further evidence on questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Evidence may also be given with special leave of the Court of Appeal as to matters which have occurred since the date of the decision from which the appeal is brought.

(i) The Court of Appeal shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as may seem just.

(j) Subject to the foregoing provisions of this Rule, every appeal shall be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Court of Appeal to which it is brought; but there shall not be anything in the nature of pleadings, other than the notice of the general grounds of the appeal, except by special permission of the Court of Appeal.

(k) On the conclusion of an appeal, the Court of Appeal shall send to the

Board of Trade a report of the case, similar to that required to be sent by the Judge from whose decision the appeal is brought.

Rehearings by order of Board of Trade.

7. (a) Where the Board of Trade direct a rehearing under section two of the "Shipping Casualties Investigations Act, 1879," they shall cause such reasonable notice to be given to the parties whom they consider to be affected by the rehearing as the circumstances of the case may, in the opinion of the Board of Trade, permit.

(b) The provisions distinguished as (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), and (*k*) of the last foregoing Rule shall apply to a rehearing as if it were an appeal, and as if the Court or authority before whom the rehearing takes place were the Court of Appeal.

No. 2 (see §§ 91, 259).

Since the above §§ were in type, the Animals Order, 1886,(*b*) has been, as regards foreign animals, superseded by the Foreign Animals Order, 1893, and in part repealed by the Foreign Animals Revocation Order, 1893.(*c*) It remains in force, however, as to animals which are not foreign. Its provisions, as regards disinfection of vessels (Art. 100) and gangways (Art. 102), and transit by water (Arts. 116–120), are substantially identical with those following (other than the Article dealing with transatlantic traffic). There is also a general prohibition against overcrowding home-trade cattle ships (Art. 117).

THE FOREIGN ANIMALS ORDER, 1893.

CHAP. 8.—DISINFECTION.

Vessels.

42. (1) A vessel used for carrying foreign animals shall, after the landing of animals therefrom, and before the taking on board (*d*) of any other animal or cargo, be cleansed and disinfected as follows:

(i) All parts of the vessel, with which animals or their droppings have come in contact, shall be scraped and swept: then

(ii) The same parts of the vessel shall be thoroughly washed or scrubbed or scoured with water: then

(iii) The same parts of the vessel shall have applied to them a coating of lime-wash: except that

(iv) The application of lime-wash shall not be compulsory as regards such parts of the vessel as are used for passengers or crew.

(2) The scrapings or sweepings of the vessel shall not be landed unless and until they have been well mixed with quicklime.

Movable gangways and other apparatus.

43. (1) A movable gangway or passage-way, cage, or other apparatus, used or intended for the loading or unloading of foreign animals on or from a vessel, or otherwise used in connection with the transit of foreign animals, or inland navigation, shall, as soon as practicable after being so used, be cleansed as follows:

(i) The gangway or apparatus shall be scraped and swept, and all dung, litter, and other matter shall be effectually removed therefrom then

(ii) The gangway or apparatus shall be thoroughly washed or scrubbed or scoured with water.

(2) The scrapings and sweepings of the gangway or apparatus, and all

(*b*) Order in Council, Sep. 16, 1886.
(*c*) Orders of the Board of Agriculture, July 27, 1893.
(*d*) Cargo may not be taken before disinfection even upon parts of the vessel where no cattle have been carried. *Ismay* v. *Blake*, 66 L. T. 530.

dung, litter, and other matter removed therefrom, shall forthwith be well mixed with quicklime, and be effectually removed from contact with animals.

* * * * * * * *

CHAP. 9.—TRANSIT BY WATER.

Shorn sheep.

44. Between each first day of November and the next following thirtieth day of April (both days inclusive), shorn sheep (being foreign animals) shall not be carried on the deck of a vessel, except where they were last shorn, sixty days before being so carried.

Gangways for sheep-pens.

45. Where sheep (being foreign animals) are carried on the deck of a vessel, proper gangways shall be provided, either between or above the pens in which they are carried.

46. The following provisions shall apply to all vessels in or on which foreign animals are conveyed to any port or place in Great Britain, except to those parts of any vessel in or on which cattle are conveyed across the Atlantic Ocean to any port or place in Great Britain (that is to say):

PART IV.—TRANSIT.

Fittings of vessels.

(1) Every place used for animals on board a vessel shall be divided into pens by substantial divisions.

(2) Each pen shall not exceed nine feet in breadth, or fifteen feet in length.

(3) The floor of each pen shall, in order to prevent slipping, be strewn with a proper quantity of litter or sand or other proper substance, or be fitted with battens or other proper footholds.

(4) Every such place, if enclosed, shall be ventilated by means of separate inlet and outlet openings, of such size and position as will secure a proper supply of air to the place in all states of weather.

Special provisions as to Transatlantic vessels conveying cattle.

47. The following regulation shall apply to all vessels in or on which cattle are conveyed across the Atlantic Ocean to any port or place in Great Britain (that is to say):

(REGULATION A.—PARTS OF VESSEL TO BE USED.)

(i) Cattle shall not be carried on more than three decks.

(ii) Cattle shall not be carried on any hatches above a compartment where other cattle are carried.

(iii) Cattle shall not be carried in any part of the vessel where, in ordinary course of navigation, they would interfere with the proper management or ventilation of the vessel, or would interfere with the efficient working of the boats necessary for the persons on board.

(REGULATION B.—PENS AND FITTINGS.)

(iv) Every part of the vessel used for cattle shall be divided into pens.

(v) The stanchions of each pen shall be securely fastened to the deck by means of iron sockets or otherwise, and the materials used in the construction of the pens, whether of timber or iron, shall be of a substantial character, and of sufficient strength and so adjusted as to withstand the action of the weather, and to resist the weight of the cattle thrown against them.

(vi) Each pen shall be provided with proper battens to prevent the cattle from slipping, and which shall be securely fastened to the deck by angle iron plates, or otherwise.

(vii) Cattle shall be protected from the weather by proper and suitable shelters.

(Regulation C.—Space.)

Special provisions as to Transatlantic vessels conveying cattle.

(viii) Not more than four cattle shall be carried in one pen, except where small store cattle are carried, in which case not more than five cattle shall be carried in one pen. Sufficient space shall be allotted in every pen to enable the cattle to properly feed and rest during the voyage.

(Regulation D.—Passage Ways.)

(ix) Between every two rows of cattle, and in front of every single row of cattle, there shall be a passage-way, the minimum width of which, in any part of the vessel, shall not be less than one foot six inches, free of obstruction.

(Regulation E.—Ventilation.)

(x) All enclosed portions of the vessel used for cattle shall be sufficiently ventilated (in addition to any ventilation obtained by means of the hatchways) by cowls or other proper means for the admission of fresh air and the removal of foul air.

(Regulation F.—Light.)

(xi) Proper and suitable arrangements shall be made to provide at all times adequate light for the proper tending of cattle.

(Regulation G.—Food and Water.)

(xii) The cattle, while on board, shall be provided with a sufficient amount of water, and proper accommodation shall be provided on board for the stowage of food, so that the same shall not be unduly exposed to the weather at sea.

(Regulation H.—Mode of Securing Cattle.)

(xiii) Every head of cattle shall be securely tied by the head so as to stand athwart ships.

(Regulation J.—Attendance.)

(xiv) Every consignment of cattle shall be in charge of a responsible foreman, who shall have under him competent assistants numbering with himself one for every twenty-five head of cattle, and proper and suitable accommodation for these persons shall be provided.

(Regulation K.—Injured Cattle.)

(xv) In the case of cattle suffering from broken limbs, or other serious injuries during the voyage, the master of the vessel shall cause such cattle to be forthwith slaughtered.

Detention.

48. Foreign animals landed from a vessel shall, on a certificate of an Inspector of the Board, certifying to the effect that the provisions of this Chapter, or some or one of them, have not or has not been observed in the vessel, be detained, at the place of landing, or in lairs adjacent thereto, until the Board otherwise direct.

The provisions (see Chap. 4) relating to the landing of foreign animals are so voluminous, and subject to such frequent alteration, that it is not thought desirable to insert them. It should be noted, however, that it is the master's duty to report immediately on arrival, to the principal officer of Customs, if he has on board the carcase of any animal intended for importation that has died on the voyage. Art. 52.

By Art. 55 non-compliance with any of the requirements of the order is deemed to be an offence against the Act of 1878 (41 & 42 Vict. c. 74, ss. 60 *et seq.*). And where it consists in the landing of animals, dung, &c., or in anything done or omitted as regards cleansing or disinfection in contravention of the order, the owners, charterer and master of the vessel in respect of which the offence is committed, are each, according to their own defaults, to be deemed guilty of it.

No. 3 (see § 108).

RULES made by the BOARD OF TRADE under "THE MERCHANT SHIPPING (LIFE-SAVING APPLIANCES) ACT, 1888" (51 & 52 Vict. c. 24).

For the purposes of these Rules, British ships shall be arranged into the following classes:—

DIVISION (A).

CLASS 1.—Steamships carrying emigrant passengers subject to all the provisions of the "Passengers Acts."

CLASS 2.—Foreign-going steamships having passenger certificates under the "Merchant Shipping Acts."

CLASS 3.—Steamships having passenger certificates under the "Merchant Shipping Acts," authorising them to carry passengers anywhere within the home-trade limits; that is to say, between places in the United Kingdom, or between the United Kingdom and ports in Europe between the River Elbe and Brest.

DIVISION (B).

CLASS 1.—Sailing ships carrying emigrant passengers subject to all the provisions of the "Passengers Acts."

CLASS 2.—Foreign-going sailing ships carrying passengers, but not subject to all the provisions of the "Passengers Acts."

CLASS 3.—Foreign-going sailing ships not carrying passengers.

CLASS 4.—Foreign-going steamships not certified to carry passengers.

DIVISION (C).

CLASS 1.—Steamships not certified to carry passengers plying anywhere within the home-trade limits.

CLASS 2.—Sailing ships in the same trades not carrying passengers.

DIVISION (D).

CLASS 1.—Steamships having passenger certificates authorising them to carry passengers within certain specified limits of the home trade; that is to say, on short specified passages along the coasts of the United Kingdom, or between Great Britain and Ireland, or between Great Britain or Ireland and the Isle of Man.

CLASS 2.—Steamships carrying passengers on short excursions or pleasure trips, to sea, or in estuaries or mouths of rivers during daylight.

CLASS 3.—Steamships carrying passengers on rivers and (or) lakes, but not going to sea or into rough waters.

DIVISION (A).—CLASS 1.

RULES and TABLE for STEAMSHIPS carrying EMIGRANT PASSENGERS subject to all the PROVISIONS of the "PASSENGERS ACTS."

(a) Ships of Division (A) Class 1, shall carry boats placed under davits, fit

and ready for use, and having proper appliances for getting them into the water, in number and capacity not less than prescribed by the following table; such boats shall be equipped in the manner required by and shall be of the description defined in the General Rules appended hereto.

(b) Masters or owners of ships of this class claiming to carry fewer boats under davits than are given in the following table must declare before the collector or other officer of Customs, at the time of clearance, that the boats actually placed under davits are sufficient to accommodate all persons on board, allowing 10 (ten) cubic feet of boat capacity for each adult person, or "statute adult."

(c) TABLE for DIVISION (A), CLASS 1.

Gross Tonnage. 1.	Minimum Number of Boats to be placed under Davits. 2.	Total Minimum Cubic Contents of Boats to be placed under Davits. L. × B. × D. × ·6. 3.
9000 and upwards	14	5250
8500 and under 9000	14	5100
8000 ,, 8500	14	5000
7750 ,, 8000	12	4700
7500 ,, 7750	12	4600
7250 ,, 7500	12	4500
7000 ,, 7250	12	4400
6750 ,, 7000	12	4300
6500 ,, 6750	12	4200
6250 ,, 6500	12	4100
6000 ,, 6250	12	4000
5750 ,, 6000	10	3700
5500 ,, 5750	10	3600
5250 ,, 5500	10	3500
5000 ,, 5250	10	3400
4750 ,, 5000	10	3300
4500 ,, 4750	8	2900
4250 ,, 4500	8	2900
4000 ,, 4250	8	2800
3750 ,, 4000	8	2700
3500 ,, 3750	8	2600
3250 ,, 3500	8	2500
3000 ,, 3250	8	2400
2750 ,, 3000	6	2100
2500 ,, 2750	6	2050
2250 ,, 2500	6	2000
2000 ,, 2250	6	1900
1750 ,, 2000	6	1800
1500 ,, 1750	6	1700
1250 ,, 1500	6	1500
1000 ,, 1250	4	1200
900 ,, 1000	4	1000
800 ,, 900	4	900
700 ,, 800	4	800
600 ,, 700	3	700
500 ,, 600	3	600
400 ,, 500	2	400
300 ,, 400	2	350
200 ,, 300	2	300
100 ,, 200	2	250

Note.—Where in ships already fitted the required cubic contents of boats placed under davits is provided, although by a smaller number of boats than the minimum required by this table, such ships shall be regarded as complying with the rules as to boats to be carried under davits.

(d) Not less than half the number of boats placed under davits shall be

boats of Section (A), or Section (B). The remaining boats may also be of such description, or may, in the option of the shipowner, conform to Section (C), or Section (D), provided that not more than two boats shall be of Section (D).

(e) If the boats placed under davits in accordance with the foregoing Table (c) do not furnish sufficient accommodation for all persons on board, then additional wood, metal, collapsible or other boats of approved description (whether placed under davits or otherwise) or approved life rafts shall be carried. One of these boats may be a steam launch; but in that case the space occupied by the engines and boilers is not to be included in the estimated cubic capacity of the boat.

Subject to the provisions contained in paragraph (g) of these rules, such additional boats or rafts shall be of at least such carrying capacity that they and the boats required to be placed under davits by Table (c) provide together in the aggregate three-fourths more than the minimum cubic contents required by column 3 of that Table. For this purpose 3 cubic feet of air case in the life raft is to be estimated as 10 cubic feet of internal capacity. Provided always that the rafts will accommodate all the persons for which they are to be certified under the Rules.

All such additional boats or rafts shall be placed as conveniently for being available as the ship's arrangements admit of, having regard to the avoidance of undue encumbrance of the ship's deck, and to the safety of the ship for her voyage.

(f) In addition to the life-saving appliances before mentioned, ships of this class shall carry not less than one approved life-buoy for every boat placed under davits. They shall also carry approved life-belts or other similar approved articles of equal buoyancy suitable for being worn on the person, so that there may be at least one for each person on board the ship.

(g) Provided nevertheless that no ship of this class shall be required to carry more boats or rafts than will furnish sufficient accommodation for all persons on board.

DIVISION (A).—Class 2.

RULES for Foreign-going Steamships having Passenger Certificates under the "Merchant Shipping Acts."

Ships of this Class shall be subject to the same requirements as those in Division (A), Class 1.

DIVISION (A).—Class 3.

RULES for Steamships having Passenger Certificates under the "Merchant Shipping Acts" authorising them to carry Passengers anywhere within the Home Trade Limits; that is to say, between places in the United Kingdom or between the United Kingdom and Ports in Europe between the River Elbe and Brest.

(a) Ships of this Class shall carry boats placed under davits in accordance with the rules and table provided for ships in Division (A), Class 1.

(b) If the boats placed under davits in accordance with this requirement do not furnish sufficient accommodation for all persons on board, then additional wood, metal, collapsible, or other boats of approved description (whether placed under davits or otherwise), or approved life-rafts, shall be carried of at least such cubical capacity that they and the boats required to be placed under davits by Table (c) provide together in the aggregate one-

half more than the minimum cubic contents provided by column 3 of that Table.

(c) Provided that if (having regard to the avoidance of undue incumbrance of the ship's deck, and to the safety of the ship for her voyage) it is not practicable for any ship of this Class to carry all the additional approved boats or approved life-rafts required by the preceding sub-section (b), the deficiency so caused may be made up by the supply of an equivalent number of approved buoyant deck seats or other approved buoyant deck fittings.

(d) Ships of this Class shall carry not less than six approved life-buoys.

(e) They shall also carry, in addition to the boats and appliances required above, approved life-belts or other similar approved articles of equal buoyancy suitable for being worn on the person, so that there may be at least one for each person on board the ship.

(f) Provided nevertheless that no ship of this Class shall be required to carry more boats, rafts, and other buoyant deck fittings than will furnish sufficient accommodation for all persons on board.

DIVISION (B).—Class 1.

RULES for Sailing Ships carrying Emigrant Passengers subject to all the Provisions of the "Passengers Acts."

(a) Ships of Division (B), Class 1, shall carry boats in accordance with the Table (c) provided for Division (A), Class 1, and such boats shall be as far as practicable placed under davits, with proper appliances for getting them into the water. All boats not placed under davits are to be so carried that they can be readily got into the water.

(b) If the boats so carried do not furnish sufficient accommodation for all persons on board, then additional life-saving appliance shall be supplied, as for ships in Division (A), Class 1.

(c) Provided that no ship in this Class shall be required to carry more boats or rafts than will furnish accommodation for all persons on board.

(d) Approved life-belts or other similar approved articles shall be carried as required for ships of Division (A), Class 1, and also one life-buoy for each boat of wood or metal.

DIVISION (B).—Class 2.

RULES for Foreign-going Sailing Ships carrying Passengers, but not subject to all the provisions of the "Passengers Acts."

Ships of this Class shall be subject to the same requirements as those in Division (B), Class 1.

DIVISION (B).—Class 3.

RULES for Foreign-going Sailing Ships not carrying Passengers.

(a) Ships of this Class shall carry a boat or boats of Sections (A) or (B) sufficient for all the persons on board, and in addition thereto one good serviceable boat of Section (D). Such boats shall be as far as practicable placed under davits, with proper appliances for getting them into the water. All boats not placed under davits are to be so carried that they can readily be got into the water to the satisfaction of the Board of Trade officer.

(b) They shall carry approved life-belts as required for ships in Division (B), Class 1, and also one life-buoy for each boat of wood or metal.

DIVISION (B).—Class 4.

RULES for Foreign-going Steamships not certified to carry Passengers.

(a) Ships of this Class shall carry, on each side, at least so many and such boats of wood or metal placed under davits, of which one on one side shall be a boat of Section (A) or Section (B), and on the other side shall be a boat of Section (A), or Section (B), or Section (C), that the boats on each side of the ship shall be sufficient to accommodate all persons on board. They shall have proper appliances for getting the boats into the water.

(b) They shall carry approved life-belts as required for ships of Division (B), Class 1.

(c) They shall carry not less than six approved life-buoys.

DIVISION (C).—Class 1.

RULES for Steamships not certified to carry Passengers plying anywhere within the Home Trade Limits.

(a) Ships of this Class shall carry, on each side, at least so many and such boats of wood or metal placed under davits, of which one on each side shall be a boat of Section (A), or of Section (B), or of Section (C), that the boats on each side of the ship shall be sufficient to accommodate all persons on board. They shall have proper appliances for getting the boats into the water.

(b) They shall also carry approved life-belts, so that there may be at least one for each person carried on board the ship.

(c) They shall also carry not less than four approved life-buoys.

DIVISION (C).—Class 2.

RULES for Sailing Ships in the same Trades not carrying Passengers.

(a) Ships of this class shall carry a boat or boats of wood or metal, at least sufficient for all persons on board, and in such a position as to be readily got into the water. Each boat shall be provided with one gallon of vegetable or animal oil and a vessel of an approved pattern for distributing it in the water in rough weather.

(b) Ships of this Class shall also carry an approved life-belt for each person on board.

(c) They shall also carry at least two approved life-buoys.

DIVISION (D).—Class 1.

RULES for Steamships having Passenger Certificates authorising them to carry Passengers within certain specified Limits of the Home Trade: that is to say, on short specified Passages along the Coasts of the United Kingdom, or between Great Britain and Ireland, or between Great Britain or Ireland and the Isle of Man.

(a) Ships of this Class shall, according to their tonnage, carry boats placed under davits, as required by the Table for ships in Division (A), Class 1, but all such boats as are not required to be of Sections (A) or (B), must be of Section (C).

(b) If the boats placed under davits in accordance with the above require-

ments do not furnish sufficient accommodation for all persons on board, then additional wood, metal, collapsible, or other boats of approved description (whether placed under davits or otherwise), or approved life-rafts, shall be carried of at least such cubical capacity that they and the boats required to be placed under davits by Table (c) provide together in the aggregate one-half more than the minimum cubic contents provided by column 3 of that Table. For this purpose 3 cubic feet of air case in the life-raft is to be estimated as 10 cubic feet of internal capacity; provided always that the rafts will accommodate the persons for which they are certified under the rules.

(c) Provided that if (having regard to the avoidance of undue incumbrance of the ship's deck, and to the safety of the ship for her voyage) it is not practicable for any ship of this Class to carry all the additional approved boats or approved life-rafts required by the preceding sub-section (b), the deficiency so caused may be made up by the supply of an equivalent number of approved buoyant deck seats or other approved buoyant deck fittings.

(d) Ships of this class shall also carry approved life-belts or other similar approved articles of equal buoyancy suitable for being worn on the person, so that there may be at least one for each person on board the ship.

(e) At least one approved life-buoy shall also be provided for each boat of wood or metal carried by the ship, but in no case shall less than six approved life-buoys be provided.

(f) Provided nevertheless that no ship of this Class shall be required to carry more boats, rafts, and other buoyant deck fittings than will furnish sufficient accommodation for all persons on board.

DIVISION (D).—Class 2.

RULES for Steamships carrying Passengers on short Excursions or Pleasure Trips to Sea, or in Estuaries or Mouths of Rivers during Daylight.

(a) Ships of this Class shall carry at least two boats of Section (A), or Section (B), or Section (C), placed under davits, and with proper appliances for getting them into the water.

(b) They shall also carry other boats, approved buoyant apparatus and (or) approved life-belts sufficient, with the boats required by paragraph (a), to keep afloat all the persons on board the ship.

(c) At least four approved life-buoys shall be carried.

DIVISION (D).—Class 3.

RULES for Steamships carrying Passengers on Rivers and (or) Lakes, but not going to Sea or into Rough Waters.

(a) Ships of this Class shall carry one boat in such a position that she can readily be got into the water. They shall also carry approved buoyant apparatus or approved life-belts and approved life-buoys at least sufficient, together with the boat, to keep afloat all persons carried on board.

(b) At least four approved life-buoys shall be carried.

Note.—A discretion may be exercised by the Board of Trade to relieve steam launches, steamers plying in narrow waters, and ferry boats from the operation of the whole or part of Rule (a) of this Class.

GENERAL RULES.

(1) Boats.—All boats shall be constructed and properly equipped as provided by these Rules, and all boats and other life-saving appliances are to be kept ready for use to the satisfaction of the Board of Trade. Internal buoyancy apparatus may be constructed of wood, or of copper or yellow metal of not less than 18 oz. to the superficial foot, or of other durable material.

Section (A).—A boat of this section shall be a life-boat, of whale-boat form, properly constructed of wood or metal, having for every 10 cubic feet of her capacity, computed as in Rule (2), at least 1 cubic foot of strong and serviceable enclosed air-tight compartments, so constructed that water cannot find its way into them.

Section (B).—A boat of this section shall be a life-boat, of whale-boat form, properly constructed of wood or metal, having inside and outside buoyancy apparatus together equal in efficiency to the buoyancy apparatus provided for a boat of Section (A). At least one-half of the buoyancy apparatus must be attached to the outside of the boat.

Section (C).—A boat of this section shall be a life-boat properly constructed of wood or metal, having some buoyancy apparatus attached to the inside and (or) outside of the boat equal in efficiency to one-half of the buoyancy apparatus provided for a boat of Section (A) or Section (B). At least one-half of the buoyancy apparatus must be attached to the outside of the boat.

Section (D).—A boat of this section shall be a properly constructed boat of wood or metal.

Section (E).—A boat of this section shall be a boat of approved construction, form, and material, and may be collapsible.

(2) Cubic Capacity.—The cubic capacity of a boat shall be deemed to be her cubic capacity, ascertained (as in measuring ships for tonnage capacity) by Stirling's rule; but as the application of that rule entails much labour, the following simple plan, which is approximately accurate, may be adopted for general purposes, and when no question requiring absolute correct adjustment is raised:

Measure the length and breadth outside and the depth inside. Multiply them together and by ·6; the product is the capacity of the boat in cubic feet. Thus a boat 28 ft. long, 8 ft. 6 in. broad, and 3 ft. 6 in. deep will be regarded as having a capacity of $28 \times 8{\cdot}5 \times 3{\cdot}5 \times {\cdot}6 = 499{\cdot}8$, or 500 cubic feet. If the oars are pulled in rowlocks, the bottom of the rowlock is to be considered the gunwale of the boat for ascertaining her depth.

(3) Number of Persons for Boats.—The number of persons a boat of Section (A) shall be deemed fit to carry shall be the number of cubic feet ascertained as in Rule (2), divided by 10.

The number of persons a boat of Section (B), (C), (D), or (E), shall be deemed fit to carry shall be the number of cubic feet ascertained as in Rule (2), divided by 8. The space in the boat shall be sufficient for the seating of the persons carried in it, and for the proper use of the oars.

(4) Appliances for Lowering Boats.—Appliances for getting a boat into the water must fulfil the following conditions: Means are to be provided for speedily, but not necessarily simultaneously or automatically, detaching the boats from the lower blocks of the davit tackles; the boats placed under davits are to be attached to the davit tackles and kept ready for service; the davits are to be strong enough and so spaced that the boats can be swung out with facility; the points of attachment of the boats to the davits are to

be sufficiently away from the ends of the boats to ensure their being easily swung clear of the davits; the boats' chocks are to be such as can be expeditiously removed; the davits, falls, blocks, eye-bolts, rings, and the whole of the tackling are to be of sufficient strength; the boat's falls are to be long enough to lower the boat into the water with safety when the vessel is light. The life-lines shall be fitted to the davits and be long enough to reach the water when the vessel is light; and hooks are not to be attached to the lower tackle blocks.

(5) Equipments for Collapsible or other Boats and for Life-Rafts.—In order to be properly equipped each boat shall be provided as follows:—

(a) With the full single-banked complement of oars, and two spare oars.

(b) With two plugs for each plug-hole, attached with lanyards or chains, and one set and a half of thole pins or crutches, attached to the boat by sound lanyards.

(c) With a sea anchor, a baler, a rudder and tiller, or yoke and yoke lines, a painter of sufficient length, and a boat-hook. The rudder and baler to be attached to the boat by sufficiently long lanyards, and kept ready for use. In boats where there may be a difficulty in fitting a rudder a steering oar may be provided instead.

(d) A vessel to be kept filled with fresh water shall be provided for each boat.

(e) Life-rafts shall be fully provided with a suitable approved equipment.

(6) Additional Equipments for Boats of Section (A) and Section (B).—In order to be properly equipped, each boat of Sections (A) and (B), in addition to being provided with all the requisites laid down in Rule (5), shall be equipped as follows, but not more than four boats in any one ship require to have this outfit:—

(a) With two hatchets or tomahawks, one to be kept in each end of the boat, and to be attached to the boat by a lanyard.

(b) With a mast or masts, and with at least one good sail, and proper gear for each.

(c) With a line becketed round the outside of the boat and securely made fast.

(d) With an efficient compass.

(e) With one gallon of vegetable or animal oil, and a vessel of an approved pattern for distributing it in the water in rough weather.

(f) With a lantern trimmed, with oil in its receiver sufficient to burn eight hours.

(7) Number of Persons for Life-Rafts.—The number of persons that any approved life-raft for use at sea shall be deemed to be capable of carrying, shall be determined with reference to each separate pattern approved by the Board of Trade; provided always, that for every person so carried there shall be at least three cubic feet of strong and serviceable inclosed air-tight compartments, constructed so that water cannot find its way into them. Any approved life-raft of other construction may be used, provided that it has equivalent buoyancy to that hereinbefore described. Every such approved life-raft shall be marked in such a way as to plainly indicate the number of adult persons it can carry.

(8) Buoyant Apparatus.—Approved buoyant apparatus shall be deemed sufficient, so far as buoyancy is concerned, for a number of persons, to be ascertained by dividing the number of pounds of iron which it is capable of supporting in fresh water by 32. Such buoyant apparatus shall not be re-

quired to be inflated before use, shall be of approved construction, and marked in such a way as to plainly indicate the number of persons for whom it is sufficient.

(9) Life-Belts.—An approved life-belt shall mean a belt which does not require to be inflated before use, and which is capable at least of floating in the water for 24 hours with 15 lbs. of iron suspended from it. Life-belts are to be cut out 2 inches under the armpits and fitted so as to remain securely in their place when put on.

(10) Life-Buoys.—An approved life-buoy shall mean either—

(a) A life-buoy built of solid cork, capable of floating in the water for at least 24 hours with 32 lbs. of iron suspended from it; or

(b) A strong life-buoy of any other approved pattern and material, provided that it is capable of floating in the water for at least 24 hours with 32 lbs. of iron suspended from it, and provided also that it is not stuffed with rushes, cork shavings, or other shavings, or loose granulated cork, or other loose material, and does not require inflation before use.

All life-buoys shall be fitted with beckets securely seized, and not less than two of them shall be fitted with life-lines 15 fathoms in length.

(11) Position of Life-Buoys and Life-Belts.—All life-buoys and life-belts shall be so placed as to be readily accessible to all persons on board, and so that their position may be known to those for whom they are intended.

(12) Water-tight Compartments.—When ships of any class are divided into efficient water-tight compartments to the satisfaction of the Board of Trade, they shall only be required to carry additional boats, rafts, and other life-saving appliances of one-half of the capacity required by these Rules.

No. 4 (see § 112).

LOAD-LINE REGULATIONS.

L.L. 13.

REGULATIONS made by the Board of Trade under "The Merchan Shipping Act, 1890" (53 Vict. c. 9).

REGULATIONS AS TO LOAD-LINE MARKS, CERTIFICATES, DRAUGHTS OF WATER, AND FREEBOARD.

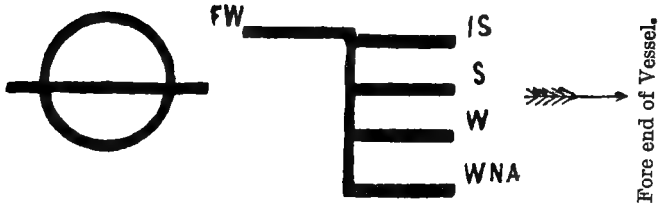
1. The Regulations made by the Board of Trade under the Merchant Shipping Act, 1890, dated the 23rd day of August, 1890, shall be and are hereby repealed, and in lieu thereof the following regulations shall have and take effect.

2. The lines to be used in order to indicate the maximum load-line under different circumstances and at different seasons shall be nine inches in length and one inch in thickness, and the maximum load-line shall be the upper edge of each of such lines.

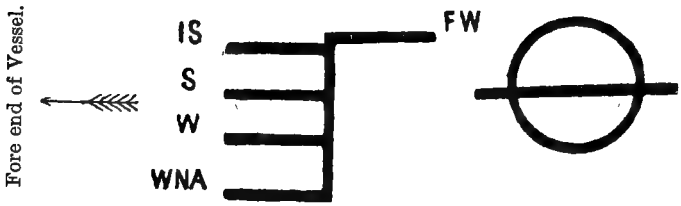
3. The said lines shall be horizontal lines marked on both sides of the ship, extending from and at right angles to a vertical line marked 21 inches forward of the centre of the disc. The maximum load-line in fresh water shall be marked abaft such vertical line, and the maximum load-lines in salt water shall be marked forward of such vertical line, as shown in the following diagrams.

FOR STEAMER.

Starboard Side.



Port Side.



FOR SAILING VESSEL.

Starboard Side.

Port Side.

The arrow (⇛⟶) points in the direction of the vessel's head.

The provisions of the Merchant Shipping Act, 1876, shall have effect as if any such maximum load-line were drawn through the centre of the disc.

4. Such maximum load-lines shall be as follows, viz. :

For fresh water,
„ Indian summer,
„ summer,
„ winter
„ winter, North Atlantic,

and shall be distinguished by initial letters conspicuously marked opposite such horizontal lines as aforesaid, such initial letters being as follows :

F.W.—Fresh water.
I.S.—Indian summer.
S.—Summer.
W.—Winter.
W.N.A.—Winter, North Atlantic.

The upper edge of the horizontal line passing through the centre of the disc shall always indicate the summer freeboard in salt water.

5. Steamships shall be marked with such of the horizontal lines as aforesaid as are applicable to the nature of their employment, and sailing ships shall be marked with such of the above-mentioned lines, in addition to the summer load-line, as indicate the maximum load-line for fresh water and for North Atlantic winter; but sailing ships engaged solely in the coasting trade shall only be marked, in addition to the summer load-line, with the line indicating the maximum load-line in fresh water.

6. The said disc, and the lines or marks to be used in connection therewith, shall be painted white or yellow on a dark ground, or black on a light ground, and the position of the disc and of each of the lines shall in the case of iron and steel vessels be permanently marked by centre punch marks, and shall in the case of wooden vessels be sunk for their breadths into the planking a depth of not less than one quarter of an inch.

7. Application for a certificate of approval of the position of the disc or any alteration thereof shall be made by one of the registered owners of the ship or the builder of the ship. Every application shall be made in the form marked L.L. 1 in the schedule hereto.

8. With respect to certificates of approval, and their duration, the following rules shall prevail:

(a) As regards iron and steel ships, whether classed or unclassed, and classed wooden ships, the certificate shall cease to have effect if and so soon as the class of the ship (if classed) is either changed or withdrawn, or if and so soon as any deterioration has taken place in the structural condition of the ship, whether classed or unclassed. Such certificate shall be in one of the forms L.L. 2 or L.L. 3 in the schedule hereto, as the case may be.

(b) As regards unclassed wooden ships which have been opened out for survey, the certificate shall be granted for a fixed time varying with the age and condition of the ship, at the expiration of which it shall cease to have effect. Such certificate shall be in the form L.L. 3A in the schedule hereto.

(c) As regards unclassed wooden ships which have not been opened out for survey, no limit of time shall be imposed in the certificate, which shall be in the form L.L. 3B in the schedule hereto.

9. Every certificate of approval shall be issued in duplicate; one part shall be delivered to the applicant, and the other part shall be forthwith sent to the Assistant Secretary, Marine Department, Board of Trade.

10. On a certificate of approval ceasing to have effect, application shall at once be made by the registered managing owner of the ship for the granting of a new certificate of approval, and the whole certificate shall be delivered up to the Board of Trade, who shall cancel the same.

11. The master of every British ship shall, before she leaves any dock, wharf, port, or harbour in the United Kingdom, her Majesty's Possessions, or in a foreign country, for the purpose of proceeding to sea, enter in the official log all the particulars stated in the certificate so issued as aforesaid if not previously entered.

12. The managing owner or master shall also forthwith, on the delivery to him or his agent of any such certificate as aforesaid, cause the same to be framed and put up in some conspicuous part of the ship so as to be visible to all persons on board the same, and shall cause it to be continued so put up so long as such certificate remains in force and such ship is in use.

13. For the purpose of these regulations the expression "amidships" shall mean the middle of the length of the load water line as measured from the fore side of the stem to the aft side of the stern post.

Dated this 24th day of October 1892.

SCHEDULE.

FORM L.L. 1.

APPLICATION for CERTIFICATE of APPROVAL of the position of a LOAD-LINE DISC under the provisions of the Merchant Shipping Acts, 1876 and 1890.

Application is hereby made to
for a certificate of approval of the position [or alteration of the position] of a load-line disc on the " ," Official No. . [the vessel is classed in] [is not classed].

The vessel is [is not] intended to be employed in the Indian Ocean.

The vessel is [is not] intended to be employed in the North Atlantic Trade.

No previous application has been made either by the builder or the owner for a certificate of approval of the position [or alteration of the position] of a load-line disc on this vessel to this or any other authority appointed in accordance with section 2 of the Merchant Shipping Act, 1890, [except in respect of a previous certificate dated , which has expired (or ceased to have effect)].

Dated this day of 18 .

Registered Owner.
[Builder].

FORM L.L. 2.

CERTIFICATE of APPROVAL of the POSITION [Alteration of the Position] of the DISC on the Steamship " ," Official No. , in pursuance of the Merchant Shipping Acts, 1876 and 1890.

The [ ]
[ ].

[I, , an officer of the Board of Trade] have approved on behalf of the Board of Trade the position [or alteration of the position] of the disc on the Steamship " ," Official No. , and hereby certify that the centre of such disc is placed at feet inches below the deck-line marked under the provisions of the Merchant Shipping Act, 1876.

This certificate is to remain in force only so long as the vessel remains in her present class, if classed, and no deterioration has taken place in her present structural condition, whether classed or unclassed.

Dated this day of 18 .

(Signed) .

POSITION of LINES to be used in connection with the Disc.

Maximum load-line in fresh water feet inches above the centre of the disc.

Maximum load-line in Indian summer feet inches above the centre of the disc.

Maximum load-line in summer the centre of the disc.

Maximum load-line in winter feet inches below the centre of the disc.

Maximum load-line in North Atlantic winter feet inches below the centre of the disc.

Note.—In accordance with regulations made by the Board of Trade the disc and lines must be permanently marked by centre punch marks or cutting, and the particulars given in this certificate are to be entered in the official log. The certificate must also be framed and put up in some conspicuous part of the ship.

If and so soon as the class of the ship, if classed, is either changed or withdrawn, or if and so soon as any deterioration takes place in the structural condition of the ship, whether classed or unclassed, this certificate will be cancelled and must be delivered to the Board of Trade for that purpose, and the owner will then be entitled to apply either to the original load-line authority, or to any other load-line authority approved by the Board of Trade, for a new oertificate.

FORM L.L. 3.

CERTIFICATES of APPROVAL of the POSITION [Alteration of the Position] of the DISC on the Sailing Ship " ," Official No. , in pursuance of the Merchant Shipping Acts, 1876 and 1890.

The [ ]
[ ].

[I, , an Officer of the Board of Trade] have approved, on behalf of the Board of Trade, the position [or alteration of the position] of the disc on the sailing ship " ," Official No. , and hereby certify that the centre of such disc is placed at feet inches below the deck-line marked under the provisions of the Merchant Shipping Act, 1876.

This certificate is to remain in force only so long as the vessel remains in her present class, if classed, and no deterioration has taken place in her present structural condition, whether classed or unclassed.

Dated this day of 18 .

(Signed) .

POSITION of LINES to be used in connection with the Disc.

Maximum load-line in fresh water, feet inches above the centre of the disc.

Maximum load-line in winter, North Atlantic, feet inches below the centre of the disc.

Note.—In accordance with the regulations made by the Board of Trade the disc and lines must be permanently marked by centre punch marks or cutting, and the particulars given in this certificate are to be entered in the official log. This certificate must also be framed and put up in some conspicuous part of the ship.

If and so soon as the class of the ship, if classed, is either changed or withdrawn, or if and so soon as any deterioration takes place in the structual condition of the ship, whether classed or unclassed, this certificate will be cancelled, and must be delivered to the Board of Trade for that purpose, and the owner will then be entitled to apply either to the original load-line authority, or to any other load-line authority approved by the Board of Trade, for a new Certificate.

L.L. 3A.

CERTIFICATE of APPROVAL of the POSITION [Alteration of the Position] of the DISC on the Sailing Ship " ," Official No. , in pursuance of the Merchant Shipping Acts, 1876 and 1890.

The [ ]
[ ].

[I, , an officer of the Board of Trade] have approved, on behalf of the Board of Trade, the position [or alteration of the position] of the disc on the sailing ship " ," Official No. , and hereby certify that the centre of such disc is placed at feet inches below the deck-line marked under the provisions of the Merchant Shipping Act, 1876.

This certificate is to remain in force until the day of 18 , and no longer.

Dated this day of 18 .

(Signed) .

POSITION of LINES to be used in connection with the Disc.

Maximum load-line in fresh water, feet inches above the centre of the disc.

Maximum load-line in winter, North Atlantic, feet inches below the centre of the disc.

Note.—In accordance with the regulations made by the Board of Trade the disc and lines must be permanently marked by centre punch marks or cutting, and the particulars given in this certificate are to be entered in the official log. The certificate must also be framed and put up in some conspicuous part of the ship.

From and after the said day of 18 , this certificate will be cancelled and must be delivered to the Board of Trade for that purpose, and the owner will then be entitled to apply either to the original load-line authority, or to any other load-line authority approved by the Board of Trade, for a new certificate.

L.L. 3B.

CERTIFICATE of APPROVAL of the POSITION [Alteration of the Position] of the DISC on the Sailing Ship " ," Official No. , in pursuance of the Merchant Shipping Acts, 1876 and 1890.

The [ ]
[ ].

[I, , an officer of the Board of Trade] have approved, on behalf of the Board of Trade, the position [or alteration of the position] of the disc on the sailing ship " ," Official No. , and hereby certify that the centre of such disc is placed at feet inches below the deck-line marked under the provisions of the Merchant Shipping Act, 1876.

Dated this day of 18 .

(Signed) .

POSITION of LINES to be used in connection with the Disc.

Maximum load-line in fresh water, feet inches above the centre of the disc.

Maximum load-line in winter, North Atlantic, feet inches below the centre of the disc.

Note.—In accordance with the regulations made by the Board of Trade the disc and lines must be permanently marked by centre punch marks or cutting, and the particulars given in this certificate are to be entered in the official log. The certificate must also be framed and put up in some conspicuous part of the ship.

No. 5 (see §§ 114, 259).

A.—Special Precautions prescribed by the Merchant Shipping (Carriage of Grain) Act, 1880,(*d*) with respect to grain cargoes laden in the Mediterranean or Black Sea, or on the coast of North America.

3. [Obligation to take all necessary and reasonable precautions to prevent grain cargo from shifting: Penalty £300. See § 114, *supra*.]

Precautions against shifting of grain cargo laden in port in Mediterranean or Black Sea, or on coast of North America.

4. Where a British ship laden with a grain cargo at any port in the Mediterranean or Black Sea is bound to ports outside the Straits of Gibraltar, or where a British ship is laden with a grain cargo on the coast of North America, the following precautions to prevent the grain cargo from shifting shall be adopted: that is to say,

(a) There shall not be carried between the decks, or if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly constructed feeders.(*e*)

(b) Where grain (except such as may be carried in properly constructed feeders) is carried in bulk in any hold or compartment, and proper provision for filling up the same by feeders is not made, not less than one-fourth of the grain carried in the hold or compartment (as the case may be) shall be in bags supported on suitable platforms laid upon the grain in bulk: Provided that this regulation with respect to bags shall not apply—

(i) To oats, or cotton seed; nor

(ii) To a ship which is a sailing ship of less than four hundred tons registered tonnage, and is not engaged in the Atlantic trade; nor

(iii) To a ship laden at a port in the Mediterranean or Black Sea, if the ship is divided into compartments which are formed by substantial transverse partitions, and are fitted with longitudinal bulkheads, or such shifting boards as hereafter in this section mentioned, and if the ship does not carry more than one-fourth of the grain cargo, and not more than one thousand five hundred quarters, in any one compartment, bin, or division, and provided that each division of the lower hold is fitted with properly constructed feeders from the between decks; nor

(iv) To a ship in which the grain cargo does not exceed one-half of the whole cargo of the ship, and the rest of the cargo consists of cotton, wool, flax, barrels, or sacks of flour, or other suitable cargo so stowed as to prevent the grain in any compartment, bin, or division from shifting.

(c) Where grain is carried in the hold, or between the decks, whether in bags or bulk, the hold or the space between the decks shall be divided by a longitudinal bulkhead or by sufficient shifting boards which extend from deck to deck, or from the deck to the keelson, and are properly secured, and if the grain is in bulk are fitted grain-tight with proper fillings between the beams.(*e*)

(d) In loading, the grain shall be properly stowed, trimmed, and secured.

(*d*) 43 & 44 Vict. c. 43. (*e*) See *The Rothbury*, 13 P. D. 672.

In the event of the contravention of this section in the case of any ship, reasonable precautions to prevent the grain cargo of that ship from shifting shall be deemed not to have been taken, and the owner and master of the ship, and any agent charged with loading her or sending her to sea, shall be liable accordingly to a penalty under this Act.

Provided that nothing in this section shall exempt a person from any liability, civil or criminal, to which he would otherwise be subject, for failing to adopt any reasonable precautions which, although not mentioned in this section, are reasonably required to prevent grain cargo from shifting.

Exemption from precautions specified in this Act for ships laden in Mediterranean or Black Sea, or on coast of North America.

5. The precautions required by this Act to be adopted by ships laden with a grain cargo at a port in the Mediterranean or Black Sea, or on the coast of North America, shall not apply to ships loaded in accordance with regulations for the time being approved by the Board of Trade;(*f*) nor to any ship constructed and loaded in accordance with any plan approved by the Board of Trade.

Notice by master of kind and quantity of grain cargo.

6. Before a British ship laden with grain cargo at any port in the Mediterranean or Black Sea, bound to ports outside the Straits of Gibraltar, or laden with grain cargo on the coast of North America, leaves her final port of loading, or within forty-eight hours after leaving such port, the master shall deliver, or cause to be delivered, to the British consular officer, or, if it is in her Majesty's dominions, to the principal officer of Customs at that port, a notice stating—

(1) The draught of water and clearside, as defined by section five of the Merchant Shipping Act, 1871, and section four of the Merchant Shipping Act, 1873, of the said ship, after the loading of her cargo has been completed at the said last port of loading;

(2) And also stating the following particulars in respect to the grain cargo: namely,

(a) The kind of grain, and the quantity thereof, which quantity may be stated in cubic feet, or in quarters, or bushels, or in tons weight; and

(b) The mode in which the grain cargo is stowed; and

(c) The precautions taken against shifting.

The master shall also deliver a similar notice to the principal collector or other proper officer of Customs in the United Kingdom, together with the report required to be made by the Customs Consolidation Act, 1876, on the arrival of the ship in the United Kingdom.

Every such notice shall be sent to the Board of Trade as soon as practicable by the officer receiving the same.

If the master fails to deliver any notice required by this section, he shall be liable to a penalty not exceeding one hundred pounds: Provided always, that the Board of Trade may, by notice published in the *London Gazette*, or in such other way as it may deem expedient, exempt ships laden at any particular port or any class of such ships from the provisions of this section.

Penalty for false statement in notice.

7. Any master of a ship who, in any notice required by this Act wilfully makes any false statement, or wilfully omits any material particular, shall be liable to a penalty not exceeding one hundred pounds.

8. [Board of Trade officer to have power of an inspector under Merchant Shipping Act, 1854 (*g*) and power to inspect any grain cargo, and the mode in which the same is stowed.]

9. [Offences under this Act may be prosecuted, and penalties recovered, summarily, in like manner as offences and penalties under the principal Act and the Acts amending the same.(*h*)]

(*f*) See The Substituted Regulations, *infra*. (*g*) See § 46, note (*y*), *supra*.
(*h*) See Chap. XI., *supra*.

10. For the purposes of this Act—

The expression "grain" means any corn, rice, paddy, pulse, seeds, nuts, or nut kernels.

The expression "ship laden with a grain cargo" means a ship carrying a cargo of which the portion consisting of grain is more than one-third of the registered tonnage of the ship, and such third shall be computed, where the grain is reckoned in measures of capacity, at the rate of one hundred cubic feet for each ton of registered tonnage, and where the grain is reckoned in measures of weight, at the rate of two tons weight for each ton of registered tonnage.

B.—Official Notices with regard to Rules and Regulations conditionally approved under sec. 5 of the foregoing Act (therein called "the said Act"). The recitals and formal parts are omitted.

COAST OF NORTH AMERICA.

Official notice No. 1. (Nov. 1890.

The precautions required by the said Act to be adopted by ships laden with a grain cargo shall not apply to ships laden at a port on the coast of North America, in accordance with the regulations numbered 1 to 4, of which the titles and dates are set forth in the first schedule hereto, so far as those regulations relate to the stowage of grain cargoes; and in accordance with the additional regulations set forth in the second schedule appended hereto, in the case of Rules 1 to 4 of the first schedule.

FIRST SCHEDULE.(i)

1. Rules of the Board of Underwriters of New York.

2. Rules of New Orleans Board of Underwriters approved and adopted by them on the 5th April, 1881, and signed by George Mather, Secretary.

3. Rules and Regulations of the Marine Surveyors at San Francisco for ships carrying grain in bags, dated 20th December, 1877, and signed by Amos Noyes, Chairman, and C. Davidson, Secretary.

4. Acts and rules relating to the loading of grain in ships at the ports of Montreal and Quebec. Rules and bye-laws of the office of the Port Warden, harbour of Montreal, signed D. R. Kerr, Port Warden, 1879, Montreal; John Dick, Port Warden, 1871, June, Quebec.

SECOND SCHEDULE.

N.B.—In all cases in which the regulations as to the stowage of grain cargo set forth in the first schedule above do not contain the express provisions contained in this second schedule, then such of the following regulations, if any, as are not included in the regulations set forth in first schedule must also be complied with. If such of these regulations as may not be included in the regulations set forth in the first schedule are not also complied with, the precautions required by the Merchant Shipping (Carriage of Grain) Act, 1880, *must be taken.*

1. That shifting boards must extend to the keelson.

2. That there shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks, any grain in bulk, except such as may be necessary for feeding the cargo in the hold, and is carried in properly constructed feeders.

(i) Copies of a pamphlet containing the rules and regulations included in this schedule can be obtained through any bookseller or chartseller; or of T. D. Potter, 31, Poultry, London; or E. Stanford, 55, Charing Cross, S.W. They are also published by Eyre & Spottiswoode, in the collection of official notices (Nos. 1 to 9), but are too long for insertion here.

3. That grain carried in bulk must be supplied by proper feeders, or else secured by bags of grain or other cargo.

4. That the ship when loaded must not have a less freeboard in any case than the freeboard required by the Rules and Tables of the Load Line Committee of 1885.

MEDITERRANEAN AND BLACK SEA.

Official notice No. 2. (Jan. 29, 1881.)

In the case of single-decked ships loading a grain cargo at a port in the Mediterranean or Black Sea, where no provision is made for feeding the hold, and where, according to the requirements of section four of the said Act, one-fourth of the grain carried in any one compartment, bin, or division must be in bags, the Board of Trade have approved a regulation that the whole fourth, or any part of the fourth, of the compartment, bin, or division which would, according to the requirements aforesaid, be stowed with grain in bags, may in lieu thereof be stowed with bales of cotton, bales of grass, or bags of flour, or other suitable cargo; provided always that the substituted cargo be supported on suitable platforms laid on the grain in bulk and be so stowed as to prevent the grain from shifting.

OATS LOADED AT CANADIAN PORTS—TWO-DECKED SHIPS.

Official notice No. 5. (June 3, 1881.)

In the case of vessels, having two or more decks, loading a cargo of oats at a Canadian port the Board of Trade have approved the following regulation: viz., that oats may be carried in bulk between the decks, provided—(1) that the between deck hatches shall not at any time be put on; and (2) that strakes of the deck shall be lifted, or, if the deck is an iron deck, sufficient openings shall be provided to admit of the cargo in the between-decks feeding the lower hold; and (3) that the precautions specified in sections 4 (*c*) and 4 (*d*) of the said Merchant Shipping (Carriage of Grain) Act, 1880, be adopted.

BARLEY SHIPPED AT THE PORTS IN THE MEDITERRANEAN AND BLACK SEA.

Official notice No. 6. (Aug. 1881.)

The Board of Trade for the time being, and until further notice, have approved of the following regulations with respect to the loading of barley shipped at ports in the Mediterranean or Black Sea, viz.:

Single-decked ships.

1. That in the case of single-decked ships loaded in accordance with plans submitted to and approved by the Board of Trade, and whose names are included in the lists of ships issued by the Board of Trade, for the information of consular officers at ports in the Mediterranean and Black Seas, the precaution as to carrying a fourth of the grain cargo in bags shall not apply in ports in the said seas.

Ships having two decks.

2. In the case of ships having two decks, and loading a grain cargo at a port in the Mediterranean or Black Sea, barley may be carried in bulk in the 'tween decks, provided that—

(a) Grain-tight feeders be fitted from the lower hold through the hatches to the uppermost deck: such feeders to contain not more than six per cent. and not less than three per cent. of the quantity carried in the hold or compartment they feed. These feeders must not interfere with or decrease in any way the two per cent. which is required to feed the grain carried in the 'tween decks.

3. Or (in lieu of the regulation contained in the paragraph 2 (a) above) barley shipped at a port in the Mediterranean or Black Sea may be carried in bulk in the 'tween decks, provided—

(a) That the between-deck hatches shall not at any time be put on; and

(b) That strakes of the deck be lifted, or if the deck is an iron deck, sufficient openings be made through the deck in the wings, which with the open hatches shall admit of the cargo in the between decks feeding the lower hold.

4. The regulations contained in this paragraph (No. 4) shall also be observed whether the ship is loaded under the regulation contained in paragraph No. 2 above, or in accordance with the regulations contained in the paragraph No. 3 above; that is to say,

(a) There shall be longitudinal grain-tight shifting boards in accordance with sub-section (c) of section 4 of the said Act, (*k*) and the grain shall be properly stowed, trimmed, and secured, as required by sub-section (d) of the said section 4.

(b) Feeders shall be fitted to feed the grain carried in the between decks, such feeders to contain not less than two per cent. of the compartments (*l*) they feed. If strakes of the deck be lifted, or sufficient openings are left to enable the grain in the 'tween decks to feed the lower hold, then it is obvious that the feeders must contain at least two per cent. of the compartments they feed, *i.e.*, the 'tween decks, plus the lower hold.

(c) The space in the 'tween decks in which barley in bulk is carried shall be bounded at each end by grain-tight transverse bulkheads or partitions extending from deck to deck.

(d) The ship shall not be overloaded.

5. If at any time it should appear to the Board of Trade that the above regulations or any of them insufficiently provide for the safety of the ship, and should therefore in their opinion be revoked and withdrawn; or that they need alteration; the Board of Trade will revoke, withdraw, or alter them accordingly.

OATS AND COTTON SEED. TWO-DECKED SHIPS—MEDITERRANEAN AND BLACK SEA TRADES.

Official notice No. 8 (Jan. 1, 1886), continued by No. 9 (Oct. 1886).

In the case of vessels having two or more decks, loading a cargo of oats *or cotton seed* at a port in the Mediterranean or Black Sea, and bound to ports outside the Straits of Gibraltar, the Board of Trade have approved the following regulation, viz., that oats *or cotton seed* may be carried in bulk between the decks, provided—

(1) That the between-deck hatches shall not at any time be put on; and

(2) That strakes of the deck shall be lifted, or if the deck is an iron deck, sufficient openings shall be provided to admit of the cargo in the between decks feeding the lower hold; and

(3) That the precautions specified in sections 4 (c) and 4 (d) of the said Merchant Shipping (Carriage of Grain) Act, 1880, be adopted.

(*k*) *I.e.*, both in the lower hold and in the 'tween decks: *The Rothbury*, 13 P. D. 119.

(*l*) *I.e.*, 2 per cent. of the grain in the compartments of the 'tween decks which they are meant to feed, plus the grain in the holds below such compartments: *The Rothbury*, *ubi sup.*

No. 6 (see § 422).

A.—*Form of Bottomry Bond.*

Know all men by these presents, that I, *A.B.*, commander and two-thirds owner of the ship *Exeter*, for myself, and *C.D.*, remaining third owner of the said ship, am held and firmly bound unto *E.F.* in the penal sum of *two thousand pounds* sterling, for the payment of which well and truly to be made unto the said *E.F.*, his heirs, executors, administrators, and assigns, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents. *In witness* whereof I have hereunto set my hand and seal, this 14th day of *December*, in the year of our Lord, 1796.

Whereas the above-bound *A.B.* hath taken up and received of the said *E.F.* the full and just sum of *one thousand pounds* sterling, which sum is to run at respondentia on the block and freight of the ship *Exeter*, whereof the said *A.B.* is now master, from the port or road of Bombay on a voyage to the port of London, having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage, at the rate or premium of *twenty-five per cent.* (25 per cent.) for the voyage. In consideration whereof usual risks of the seas, rivers, enemies, fires, pirates, &c., are to be on account of the said *E.F.* And for the further security of the said *E.F.* the said *A.B.* doth by these presents mortgage and assign over to the said *E.F.*, his heirs, executors, administrators, and assigns, the said ship *Exeter* and her freight, together with all her tackle, apparel, &c. And it is hereby declared, that the said ship *Exeter* and her freight is thus assigned over for the security of the respondentia taken up by the said *A.B.*, and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

Now the condition of this obligation is such, that if the above-bound *A.B.*, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid, unto the said *E.F.*, or his attorneys in London legally authorised to receive the same, their executors, administrators, or assigns, the full and just sum of £1000 sterling, being the principal of this bond, together with the premium which shall become due thereupon, at or before the expiration of *ninety* days after the safe arrival of the said ship *Exeter* at her moorings in the river Thames, or in the case of the loss of the said ship *Exeter* such an average as by custom shall have become due on the salvage, then this obligation to be void and of no effect, otherwise to remain in full force and virtue. Having signed the three bonds of the same tenor and date, the one of which being accomplished, the other two to be void and of no effect.

A. B. for self and *C. D.* (*m*) } (L. S.)

Signed, sealed, and delivered (where no stamped paper is to be had) in the presence of } *G. H.* *I. K.*

(*m*) In this bond, the occasion of borrowing the money is not expressed (see the next form), but the money was in reality borrowed to refit the ship, which, being on a voyage from Bengal to London, was obliged to put back to Bombay to repair. See *The Exeter*, Whitford, 1 C. Rob. 176. The occasion, therefore, of borrowing the money gave the lender the security of the entire interest of the ship. But this bond, although expressed to be executed by the master for himself and the other part-owner, would not bind the other part-owner personally, unless he had by a previous deed authorised the master to execute such a bond for him.

B.—*Form of Respondentia Bond.* (*n*)

Know all men by these presents, that I, *A. B.*, master of the ship *Sultan*, am held and firmly bound unto *C. D.*, of Boston, in the United States of America, in the full sum of 30,000 dollars, lawful money of the said United States, to be paid to the said *C. D.*, or his certain attorney, or his executors, administrators, or assigns, to which payment I bind myself firmly by these presents.

Sealed with my seal, and dated this day of 18

Whereas the said ship *Sultan*, having laden on board a cargo of cotton and corn, was accidentally stranded, and suffered great damage, and was taken into the harbour of Key West by salvors, and her cargo discharged, some being damaged, and whereas great expenses for salvage and other charges were necessarily incurred and were charged on the said cargo, which said expenses the said master was unable to pay.

And whereas the said *C. D.* did contract and agree with the said *A. B.* to advance the sum and sums of money necessary to enable him to pay the said charges and expenses upon the goods and merchandise, lately the cargo of the ship *Sultan*, and to re-ship and forward the same from Key West to their destination (that is to say), to the port of Liverpool in England, it being expressly agreed before any part of such advance was made, that such advance should be by way of *respondentia* on the said cargo, in the voyage last aforesaid; and whereas under and pursuant to the agreement last aforesaid, the sum of 25,000 dollars was advanced as aforesaid. And whereas the said goods and merchandise have now been laden at Key West on board the ship called the *T. J. Roger*, and bound for Liverpool, to be carried to Liverpool aforesaid. Now, in pursuance of the original agreement aforesaid, and in execution of the same, it is hereby declared that the said goods and merchandise are hypothecated and assigned over by way of *respondentia* security, and that the same are to be delivered to no other use whatsoever.

Now the condition of the above written obligation is such, that if the said ship, *T. J. Roger*, do and shall depart from Key West, and sail to and arrive at Liverpool, and if the said *A. B.* shall pay unto the said *C. D.* or his legal representative, within ten days after such arrival, the full sum of 25,000 dollars, together with a premium thereon of fifteen per cent., or if in the said voyage an utter loss of the said ship by any perils of the sea, which are insured against under policies (a form whereof is hereto annexed), shall unavoidably happen, and the said *A. B.*, or those for whom he acts, shall well and truly, without delay, account with the said *C. D.*, or his representatives or assigns, for the just salvage which shall be received from and on account of the said hypothecated merchandise, and shall well and truly pay or deliver the same unto him or them, and shall not deliver the said merchandise to any other use whatsoever, without payment of the principal and interest and premium due on this bond, then this obligation shall be void, otherwise to remain in full force.

A. B. (L.S.)

Signed, sealed, and delivered by the within named *A. B.*, in the presence of } *E. F.*

(*n*) This form does not expressly state that the lender takes the maritime risk (see preceding form). This may, however, be collected from the bond, which is an adaptation from that used in *The Sultan* (Sw. 504), with the omission of those parts which were pronounced against, as seeking to charge cargo not at risk.

A.—ENG. 1. No. 7 (see § 479). EXECUTED IN PAGES.

*** *Any Erasure, Interlineation, or Alteration in this Agreement will be void unless attested by some Superintendent of a Mercantile Marine Office, Officer of Customs, Consul, or Vice-Consul, to be made with the consent of the persons interested.*

ISSUED BY THE BOARD OF TRADE, May, 1891, In pursuance of the Mer. Ship. Acts, 1854 to 1890.

AGREEMENT AND ACCOUNT OF CREW.

(FOREIGN-GOING SHIP.)

The term "Foreign-going Ship" means every Ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the Coasts of the United Kingdom; the Islands of Guernsey, Jersey, Sark, Alderney and Man, and the Continent of Europe, between the River Elbe and Brest inclusive.

Name of Ship.	Official No.	Port of Registry.	Port No. and Date of Register.	Registered Tonnage.		Nominal Horse Power of Engines (if any).
				Gross.	Net.	

REGISTERED MANAGING OWNER.		Number of Seamen for whom accommodation is certified (30 & 31 Vict. c. 124).	FOR PARTICULARS AS TO LOAD LINE, SEE LAST PAGE [p. 680].
Name.	Address. (State No. of House, Street, and Town.)		

Scale of provisions to be allowed and served out to the Crew during the Voyage, in addition to the daily issue of Lime and Lemon Juice and Sugar, or other antiscorbutics in any case required by 30 & 31 Vict. c. 124, s. 4.

	Bread lb.	Beef lb.	Pork lb.	Tinned Meats lb.	Soup and Bouilli pint.	Preserved Potatoes lb.	Compressed or Preserved Vegetables lb.	Flour lb.	Peas pint.	Rice lb.	Tea oz.	Coffee oz.	Sugar oz.	Molasses oz.	Water qts.
Sunday . .															
Monday .															
Tuesday .															
Wednesday															
Thursday .															
Friday . .															
Saturday .															

Note.—In any case an equal quantity of Fresh Meat or Fresh Vegetables may, at the option of the Master, be served out in lieu of the Salted or Tinned Meats or Preserved or Compressed Vegetables named in the above scale.

The several Persons whose names are hereto subscribed, and whose descriptions are contained on the other side or sides, and of whom are engaged as Sailors, hereby agree to serve on board the said Ship in the several capacities expressed against their respective Names on a voyage from (*o*)

And the Crew agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective Duties, and to be obedient to the lawful commands of the said Master, or of any Person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or on shore; in consideration of which Services to be duly performed, the said Master hereby agrees to pay to the said Crew as Wages the Sums against their Names respectively expressed, and to supply them with provisions according to the above Scale. And it is hereby agreed, That any Embezzlement or wilful or negligent Destruction of any part of the Ship's Cargo or Stores shall be made good to the Owner out of the Wages of the Person guilty of the same: And if any Person enters himself as qualified for a duty which he proves incompetent to perform, his Wages shall be reduced in proportion to his incompetency, and it is also agreed that the Regulations authorized by the Board of Trade, which are printed herein and numbered (*p*)

are adopted by the parties hereto, and shall be considered as embodied in this Agreement: And it is also agreed, That if any Member of the Crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require: And it is also stipulated that the Seamen shall receive the advances of Wages entered herein against their Names: And it is also agreed, That (*q*)

[1] The Authority of the Owner or Agent for the allotments mentioned within is in my possession.

_____ { *Superintendent, Officer of Customs, or Consular Officer.*

[1] This is to be signed if such an authority has been produced, and to be scored across in ink if it has not.

In Witness whereof the said Parties have subscribed their Names on the other Side or Sides hereof on the days against their respective signatures mentioned.

Signed by _____ *Master,*

on the _____ day of _____ 189—.

Date of Commencement of Voyage.	Port at which Voyage commenced.	These columns to be filled up at the end of the Voyage.			
		Date of Termination of Voyage.	Port at which Voyage terminated.	Date of Delivery of Lists to Superintendent.	I hereby declare to the truth of the Entries in this Agreement and Account of Crew, &c. _____ *Master.*

(*o*) Here the Voyage is to be described, and the places named at which the Ship is to touch, or, if that cannot be done, the general nature and probable length of the Voyage is to be stated.
(*p*) Here are to be inserted the Numbers of any of the Regulations for preserving discipline issued by the Board of Trade, and printed on the last page hereof, which the parties agree to adopt.
(*q*) Here any other stipulations may be inserted to which the parties agree, and which are not contrary to Law.

N.B.—This Form must not be unstitched. No leaves may be taken out of it, and none may be added or substituted. Care should be taken at the time of Engagement that a sufficiently large Form is used. If more men are engaged during the voyage than the number for whom signatures are provided in this Form, an additional Form Eng. 1 should be obtained and used. [*pages.*]

Nam

PARTICULA

Reference No.	SIGNATURES OF CREW.	Age.	(r) Nationality.	(1) Port of Engagement Address, and (2) Home Address. N.B.—Both to be inserted. The *Home* Address is the one to which communications should be made in the event of the death of the Seaman.	Ship in which he last served, and Year of Discharge therefrom.		Date and Place of Signing this Agreement.		In what capacity engaged, (s) No. of Certificate (if any), and No. of Reserve Commission or R.V. 2 (if any).	Date and hour at which he is to be on board.	Amou Wag per We Calen Mont
					Year.	State Name and Official No. or Port she belonged to.	Date.	Place.			
	1	2	3	4	5	6	7	8	9	10	11
1				(1) (2)							
2	Master to sign first.			(1) (2)							
3				(1) (2)							
4				(1) (2)							
5				(1) (2)							
6				(1) (2)							
7				(1) (2)							

(r) If a British Subject, state Town or Country of Birth, and if born in a fo
(s) Engineers not employed on the Propelling Engines and B
(t) If any Member of the Crew enters her Majesty's Service, the Name of the Queen's Ship into which he enters is should be briefly stated thus, "Dischar

Name

ACCOUNT OF APPRENTICES ON BOARD (IF ANY).

Christian and Surname of the Apprentices at full length.	Year of Birth.	Registry of Indenture.		Date, Place and Cause of Leaving this Ship, or of De *To be filled up by the Master.*		
		Date of	Port of	Date.	Place.	Cause.
1	2	3	4	5	6	7

Ship _____.

ENGAGEMENT.				PARTICULARS OF DISCHARGE, &c., *To be filled in by the Master upon the Discharge, Death, or Desertion of any Member of his Crew.*				RELEASE (late M).		
Advances made in the United Kingdom of not more than One Month's Wages, conditional on going to Sea.	Other Advances, not being conditional on the Seaman's going to Sea from the United Kingdom.	Amount of Weekly or Monthly Allotment.	Signature or Initials of Official before whom the Seaman is engaged.	Date, Place, and Cause of leaving this Ship, or of Death.			Balance of Wages Paid on Discharge.	We, the undersigned Members of the Crew of this Ship, do hereby release this Ship, and the Master and Owner or Owners thereof, from all Claims for Wages, or otherwise in respect of this Voyage, and I, the Master, do hereby release the said undersigned Members of the Crew from all Claims in respect of the said Voyage. Signatures of Crew (each to be on the Line on which he signed in Col. 1).	Signatures or Initials of Official before whom the Balance of Wages was paid, Release signed, and Date.	Reference No.
12	13	14	15	16 Date.	17 Place.	18 Cause(*t*)	19	20	21	
										1
										2
										3
										4
										5
										6
										7

Country, state whether a natural-born British Subject or naturalized.
should be described as Engine Drivers here and in Dis. 1.
stated under the head of "*Cause of leaving the Ship*," thus, "H.M.S. Revenge"; and the other Causes of leaving the Ship "Deserted," "Left Sick," "Died."

Ship _____ CERTIFICATES (*u*)

Or Indorsements made by Consuls or by Officers in British Possession Abroad.

(*u*) This part of the Form is omitted from the Office Copy to be forwarded to the Registrar-General of Seamen.

[*pages*]

LOAD-LINE AND DRAUGHT OF WATER.

POSITION OF DISC.

* The centre of the disc is placed at feet inches below the deck line marked under the provisions of the Merchant Shipping Act, 1876.

* POSITION OF LINES USED IN CONNECTION WITH THE DISC.

SAILING SHIP.

Maximum load-line in fresh water, feet inches above the centre of the disc.

Maximum load-line in winter, North Atlantic, feet inches below the centre of the disc.

Moulded depth of vessel

* These particulars are to be taken from the certificate of approval of the position, or alteration of the position, of the disc, and the words which are not applicable should be erased.

STEAM SHIP.

Maximum load-line in fresh water feet inches above the centre of the disc.

Maximum load-line in Indian summer feet inches above the centre of the disc.

Maximum load-line in summer the centre of the disc.

Maximum load-line in winter feet inches below the centre of the disc.

Maximum load-line in North Atlantic winter feet inches below the centre of the disc.

REGULATIONS FOR MAINTAINING DISCIPLINE,

SANCTIONED BY THE BOARD OF TRADE IN PURSUANCE OF S. 149 OF THE MERCHANT SHIPPING ACT, 1854.

THESE Regulations are distinct from, and in addition to, those contained in the Act, and are sanctioned but not universally required by Law. All or any of them may be adopted by agreement between a Master and his Crew, and thereupon the offences specified in such of them as are so adopted will be legally punishable by the appropriate Fines or Punishments. These Regulations, however, are not to apply to Certificated Officers.

These Regulations are all numbered, and the numbers of such of them as are adopted must be inserted in the space left for that purpose in the Agreement, page 1, and the following copy of these Regulations must be made to correspond with the Agreement by erasing such of the Regulations as are not adopted. If the Agreement is made before the Superintendent of a Mercantile Marine Office, his signature or initials must be placed opposite such of the Regulations as are adopted.

For the purpose of legally enforcing any of the following penalties, the same steps must be adopted as in the case of other Offences punishable under the Act; that is to say, a statement of the Offence must, immediately after its commission, be entered in the Official Log Book by the direction of the Master, and must at the same time be attested to be true by the Signatures of the Master and the Mate, or one of the Crew; and a copy of such entry must be furnished, or the same must be read over to the Offender, before the ship reaches any Port or departs from the Port at which she is; and an entry that the same has been so furnished or read over, and of the reply, if any, of the Offender, must be made and signed in the same manner as the entry of the Offence. These entries must, upon discharge of the Offender, be shown to the Superintendent of a Mercantile Marine Office before whom the Offender is discharged; and if he is satisfied that the Offence is proved, and that the entries have been properly made, the Fine must be deducted from the Offender's wages, and paid over to the Superintendent.

If, in consequence of subsequent Good Conduct, the Master thinks fit to remit or reduce any fine upon any Member of his Crew which has been entered in the Official Log, and signifies the same to the Superintendent, the Fine shall be remitted or reduced accordingly. If wages are contracted for by the Voyage or by Share, the amount of the Fines is to be ascertained in the manner in which the Amount of Forfeiture is ascertained in similar cases under Sect. 252.

No.	OFFENCE.	Amount of Fine or Punishment.	Signature of Superintendent.
1	Striking or assaulting any person on Board or belonging to the Ship (if not otherwise prosecuted)	Five Shillings.	
2	Bringing or having on board spirituous liquors	Five Shillings.	
3	Drunkenness. First Offence	Five Shillings.	
	" Second and for each subsequent Offence	Ten Shillings.	
4	Taking on Board and keeping possession of any fire-arms, knuckle-duster, loaded cane, slung-shot, sword-stick, bowie knife, dagger, or any other offensive weapon or offensive instrument, without the concurrence of the Master, for every day during which a seaman retains such weapon or instrument	Five Shillings.	

INSTRUCTIONS TO MASTERS.(x)

Agreements.

1. The Merchant Shipping Act requires the Master of every Ship, *except Ships of less than eighty tons exclusively employed in the coasting trade*, to enter into an Agreement with every Seaman whom he carries to Sea as one of his Crew. The term "Seaman" includes every person, except Master, Pilots, and Apprentices (duly indentured and registered), employed or engaged in any capacity on board any Ship.

2. In order to enable the Seaman to know the contents of the Agreement, the Master at the commencement of the voyage is bound, under a Penalty of £5, to have a legible copy (omitting the signatures) placed in an accessible part of the Ship.

3. All alterations in any Agreement (except additions in shipping substitutes) are inoperative unless proved to have been made with the consent of all persons interested, by the written attestation of a Superintendent, of a Mercantile Marine Office, Justice, Officer of Customs, Consul, or Vice-Consul.

4. Fraudulently altering, or making any false entry in, or delivering a false copy of any Agreement, or being party to such an act, may be punished by the infliction of a Penalty not exceeding £100, or by imprisonment with or without hard labour for any period not exceeding six months.

5. The Crews of all British foreign-going Ships must be engaged in the United Kingdom in the presence of a Superintendent of Mercantile Marine, who will read over and explain the Agreement to the Seamen before they are allowed to sign it.

6. Steamers, fruit Vessels, and other foreign-going Vessels, which make short and frequent Voyages, and keep the same Crews, are allowed to have running Agreements, lasting, like those of home-trade Ships, for six months. The Masters of these Vessels are thus relieved from the necessity of discharging and re-engaging their Crews at the Mercantile Marine Office on each return to the United Kingdom. If the Crew are engaged under a running Agreement, the Master, upon *every* return of the Ship to the United Kingdom, is to deposit his Agreement at the Mercantile Marine Office, and is to discharge or engage any of his Crew before the Superintendent. Before the Ship leaves Port, the Master is required to endorse on the Agreement whether any changes have been or are intended to be made in his Crew. Any false statement renders the Master liable to a penalty not exceeding £20.

Engagement of Crews and Seamen in the United Kingdom.

7. Whenever a Master of a Ship is desirous of making use of the Mercantile Marine Office for the purpose of *selecting* his Crew he must inform the Superintendent, so that a notice may be published for the information of those men who are seeking employment.

8. In all cases the Superintendent should have at least six hours' notice of the time at which the Master and Crew are to attend to sign the Agreement. Before the engagement of the Crew is proceeded with, the Master must—

(*a*) Produce the Certificates for himself, his Mates, and his Engineers (if any).

(*b*) Produce the authority of his Owners or their Agents for his issuing allotment notes to his Crew.

(*c*) Produce the Apprentices destined for the voyage, together with their Indentures.

9. Upon the Master complying with the above Regulations, the Superintendent will, when the engagement of the Crew has been completed, give him a Certificate for clearance outwards.

10. Superintendents will give the like Certificates to Masters of Ships who have entered into running Agreements with their Crews, upon their complying with the Regulation (6) above, and producing at the Mercantile Marine Office the Certificate of any Mate or Engineer engaged during or subsequent to the last voyage.

11. The engagement of substitutes for Seamen who have died or left the Ship within twenty-four hours of her putting to Sea is to be made before a Superintendent if practicable, but if not the Master as soon as possible is to have the Agreement read over and explained to the substitutes in the presence of a witness who is to attest their signatures.

12. Carrying any Seaman to sea without entering into an Agreement subjects the Master of a foreign-going Ship to a penalty of £5.

13. The Master of a foreign-going Ship incurs a penalty of £5 if he does not report to the nearest Mercantile Marine Office any changes in his Crew before he finally leaves the United Kingdom.

Ports Abroad.

14. Upon the arrival of the Ship at any Foreign Port where there is a British Consular Officer, or at any Port in any British Possession abroad, the Master is bound under a *Penalty of Twenty Pounds* to deliver within forty-eight hours of the Ship's arrival (if the Ship remains forty-eight hours at the Port, and is not a Passenger Ship), to the Consular Officer, or the Chief Officer of Customs, the Agreement, and all Indentures and Assignments of Apprenticeships. The Officer will keep them during the Ship's stay at the Port, and will, within a reasonable time before the Ship's departure, return them to the Master, with a Certificate stating when they were delivered and returned.

15. The engagement or discharge of any Seaman abroad must be made before the British Consul in a Foreign Port, or before the Customs Officer in a British Possession, who will endorse upon the Agreement a Certificate accordingly. If this Certificate be not made the Master of the Ship is liable to a Penalty. (*See also paras.* 20, 21, *and* 22 *below.*)

Return to the United Kingdom.

16. The Crew of every British foreign-going Ship discharged in the United Kingdom must be discharged and receive their wages in the presence of a Superintendent of a Mercantile Marine Office. An infringement of this law renders the Master or Owner liable to a penalty of £10.

17. In all cases in which Crews are to be discharged at the Mercantile Marine Office, at least twenty-four hours' notice should be given to the Superintendent by the Master or Owner.

18. Within forty-eight hours after the Ship's arrival at her final Port of destination in the United Kingdom, or upon the discharge of the Crew, whichever first happens, the Master is to deliver to the Superintendent of the Mercantile Marine Office the Agreement, with a list of the Crew and Official Log Book, and accounts of the wages and effects of any Seaman or Apprentice who has died on board during the voyage, whether he formed part of the Crew or not, any effects remaining unsold, and the balance of wages or other moneys belonging to any such Seaman or Apprentice. When the effects of a deceased Seaman have been sold on board a vessel, the proceeds of such sale must in every case be handed over to the Superintendent, without deduction, unless such proceeds have already been paid by the Master to a Consul or Colonial Officer on behalf of the Board of Trade. The Master is also to deliver to the Superintendent the Certificates (Mate's, Engineer's, or Naval Reserve) of any who have died or deserted during the voyage. The Superintendent will then give a Certificate for the purpose of clearance inwards.

19. The Master is to give to every Seaman (or leave with the Superintendent on his behalf) an account, on a form sanctioned by the Board of Trade, of his wages, and of all deductions to be made therefrom, at least twenty-four hours before the time of payment or discharge, under a Penalty of £5 for non-compliance. Deductions for fines, forfeitures, &c., which are sought to be made in this account must be proved by proper entries made in the Official Log Book.

20. Upon paying off or discharging any Seaman, the Master is bound under a Penalty of £10 to give the Seaman a Certificate of Discharge, and the Master is also bound under a Penalty of £20 to return to any certificated Mate or Engineer upon his discharge his Certificate of Competency or Service.

21. A statement of the conduct, character and qualification of each member of the Crew, or a statement that he declines to give an opinion on such particulars, is to be entered and signed by the Master in the Official Log Book as required by the Act.

22. Upon payment of wages and settlement of disputes (if any) being effected, the Officer before whom the men are discharged will require the Crew to sign *in his presence* a release from all claims in respect of the voyage just finished. (*See page* [679], *cols.* 19 *and* 20.)

(x) Omitted from the Office Copy to be forwarded to the Registrar General of Seamen.

B.—This Agreement is to be used only for Voyages made on the Coasts of the United Kingdom, or to the Islands of Jersey, Guernsey, Alderney, Sark, and Isle of Man, or to places on the Continent of Europe between the River Elbe and Brest, inclusive.

ENG. 6.

*** *Any Erasure, Interlineation, or Alteration in this Agreement will be void unless attested by some Superintendent of a Mercantile Marine Office, Officer of Customs, Consul, or Vice-Consul, to be made with the consent of the persons interested.*

Date of Termination of Half-Year.
189 .

EXECUTED IN PAGES.

ISSUED BY THE BOARD OF TRADE, January, 1893. In pursuance of 17 & 18 Vict., c. 104.

HALF-YEARLY AGREEMENT AND ACCOUNT OF VOYAGES AND CREW OF A SHIP ENGAGED IN THE HOME TRADE ONLY.

☞ NOTICE.—*As this Agreement is made for Voyages in the Home Trade only, the Crew need not be engaged before a Superintendent of Mercantile Marine. On whatever date the Agreement is made it expires on the next following 30th day of June or 31st day of December next, as the case may be, and is then, or within twenty-one days afterwards, to be delivered to the Superintendent of a Mercantile Marine Office. If, however, the Ship is absent from the United Kingdom on the 30th day of June or 31st day of December, then this Agreement remains in force until the first arrival of the Ship at her final port of destination in the United Kingdom after such day, or the discharge of cargo consequent on such arrival, when it is to be delivered up to a Superintendent.*

On this Agreement and Account of Crew being duly completed and deposited at a Mercantile Marine Office, the Superintendent will issue the Certificate C. C., to enable the Ship to be cleared at the Custom House.

Neglect to deposit the returns within the time prescribed by the Merchant Shipping Act subjects the Owner or Master to a penalty, and will lead to delay in the issue of the Clearance Certificate and consequent detention of the Ship.

N.B.—*The Master's attention is specially directed to the "Instructions to Masters of Home Trade Vessels," contained on page* [683].

Name of Ship.	Official No.	Port of Registry.	Port No. and Date of Register.	Registered Tonnage.		Nominal Horse-power of Engines (if any).	No. of Seamen for whom accommodation is certified, 30 and 31 Vict. c. 124.
				Gross.	Net.		

REGISTERED MANAGING OWNER.		MASTER.			FOR PARTICULARS AS TO LOAD LINE SEE PAGE [680].
Name.	Address. (State No. of House, Street, and Town.)	Name.	No. of Certificate (if any).	Address. (State No. of House, Street, and Town.)	

Scale of Provisions to be allowed and served out to the Crew during the Voyage, in addition to the daily issue of Lime and Lemon Juice and Sugar, or other antiscorbutics in any case required by 30 & 31 Vict. c. 124, s. 4.
[See Appendix 7A, *supra*.]

The Several Persons whose names are hereto subscribed, and whose descriptions are contained on the other side or sides, and of whom are engaged as Sailors, hereby agree to serve on board the said Ship in the several capacities expressed against their respective Names, which is to be employed* [Blank space follows].

And the Crew agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective Duties, and to be obedient to the lawful commands of the said Master, or of any Person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or on shore: in consideration of which Services to be duly performed, the said Master hereby agrees to pay to the said Crew as Wages the Sums against their Names respectively expressed, and to supply them with Provisions according to the above Scale. And it is hereby agreed, That any Embezzlement or wilful or negligent Destruction of any part of the Ship's Cargo or Stores shall be made good to the Owner out of the Wages of the Person guilty of the same: And if any Person enters himself as qualified for a duty which he proves incompetent to perform, his Wages shall be reduced in proportion to his incompetency: And it is also agreed, That the Regulations authorized by the Board of Trade, which are printed herein and numbered† are adopted by the parties hereto, and shall be considered to be embodied in this Agreement.

And it is also agreed, That if any Member of the Crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require: And it is also stipulated that the Seamen shall receive the advances of wages entered herein against their names: And it is also agreed, That‡ [Blank space follows].

In Witness whereof the said Parties have subscribed their Names on the other Side or Sides hereof on the days against their respective Signatures mentioned.

_____ *Master.*

This Column to be filled in by the Master at the end of the last Voyage or the half-year.	To be filled in by the Superintendent.
I hereby declare to the truth of the Entries in this Agreement and Account of Crew, &c. _____ *Master.*	Received at the day of 189 . _____ *Superintendent of Mercantile Marine.*

* Here the probable nature of the Ship's employment for the ensuing six months is to be described, thus, "In the Coasting Trade of the United Kingdom"; "In the Home Trade." The particulars of each Voyage made under this Agreement are to be inserted in the Form provided on page 677.
† and ‡ Appendix to 7A, *supra*.

N.B.—This Form must not be unstitched. No leaves may be taken out of it, and none may be added or substituted. Care should be taken at the time of Engagement that a sufficiently large Form is used. If more men are engaged during the half-year, terminating on the 30th day of June or 31st day of December next, than the number for whom signatures are provided in this Form, an additional Form, Eng. 6, should be obtained and used.

[Here follow Particulars of Engagement. See next page.]

LOAD-LINE AND DRAUGHT OF WATER. [See Appendix No. 7A, *supra*.]

The Summer Months are April to September inclusive. The Winter Months are October to March inclusive.

REGULATIONS FOR MAINTAINING DISCIPLINE. [See Appendix No. 7A, *supra*.]

INSTRUCTIONS TO MASTERS OF VESSELS ENGAGED IN THE HOME TRADE.

Home Trade Agreements.

1. The Merchant Shipping Act requires the Master of every Ship, *except Ships of less than eighty tons exclusively employed in trading upon coasts of the United Kingdom*, to enter into an Agreement with every Seaman whom he carries to sea as one of his Crew. (The term "Seaman" includes every person, except Masters, Pilots and Apprentices (duly indentured and registered), employed or engaged in any capacity on board any Ship.)

S. 157. 2. Neglect to comply with this regulation subjects the Master or Owner to a penalty not exceeding £5 for every offence.

S. 155. 3. In order to enable the Seaman to know the contents of the Agreement, the Master must cause the Agreement to be read over and explained to each Seaman, and the Seaman will thereupon sign the same in the presence of a witness, who shall attest his signature.

S. 166. 4. The Master is bound, under a penalty of £5, to have a legible copy of the Agreement (omitting the signatures) placed in an accessible part of the Ship.

S. 163. 5. All alterations in any Agreement (except additions in shipping substitutes) are inoperative unless proved to have been made with the consent of all persons interested, by the written attestation of a Superintendent of a Mercantile Marine Office, Justice, Officer of Customs, Consul or Vice-Consul, or where there is no such Officer, of two respectable British Merchants.

S. 164 and S. 518. 6. Fraudulently altering, or making any false entry in, or delivering a false copy of any Agreement, or being party to such an Act, may be punished by the infliction of a Penalty not exceeding £100, or by imprisonment with or without hard labour for any period not exceeding six months.

Ports Abroad.

S. 279. 7. Upon the arrival of the Ship at any Foreign Port where there is a British Consular Officer, the Master is bound under a *Penalty of Twenty Pounds* to deliver within forty-eight hours of the Ship's arrival (if the Ship remains forty-eight hours at the Port, and is not a passenger Ship) to the Consular Officer, the Agreement, and all Indentures and Assignments of Apprenticeships. These the Consul will keep during the Ship's stay at the Port, and will, within a reasonable time before the Ship's departure return to the Master, with a Certificate stating when they were delivered and returned.

SS. 160, 205, and 207. 8. The engagement or discharge of any Seaman abroad *must be made before the British Consul*, who will endorse upon the Agreement a Certificate accordingly. If this Certificate be not made the Master of the Ship is liable to a Penalty. (*See also pars.* 14 *and* 15 *below.*)

Official Log Books.

9. Every Ship, of whatever tonnage, *which trades to any Port out of the United Kingdom, must carry an Official Log Book*, which must be delivered at the termination of the half-year or Home Trade employment, with the Agreement and Account of Crew, to the Superintendent of a Mercantile Marine Office. SS. 280, 286, and 287.

10. The Master's attention is specially directed to the Instructions contained in the 2nd and 3rd pages of the Official Log Book as to the entries which are required by law to be made therein.

11. On every occasion of the Vessel proceeding to Sea, the Master is required, under a penalty of £20, to enter in the Official Log Book the Ship's draught of water. S. 5, M. S. Act of 1871.

Termination of Voyage or Half Year.

12. This Agreement may not extend beyond the date of the first arrival of the Ship at her final port of destination in the United Kingdom after the 30th June or 31st December next following. S. 162, par. 1.

13. Within twenty-one days after the 30th June or the 31st December, or previously if by change of Employment the Vessel leaves the Home for the Foreign Trade, the Master or Owner is to deliver to the Superintendent of Mercantile Marine a Return in this Form, together with accounts of the wages and effects of any Seaman or Apprentice who has died on board during the period of the Home Trade Agreement, and any effects remaining unsold, and the balance of wages or other moneys belonging to any such Seaman or Apprentice. The Master is also to deliver to the Superintendent the Certificates (Mates, Engineers, or Naval Reserve men) of any who have died or deserted during the Voyage. The Superintendent will then give a Certificate for the purpose of clearance. S. 182, par. 2, and SS. 275 and 276.

14. The Master is to give to every Seaman (or leave with the Superintendent on his behalf) an account, on a form sanctioned by the Board of Trade, of his wages, and of all deductions to be made therefrom, at least twenty-four hours before the time of payment or discharge, under a Penalty of £5 for non-compliance. Deductions for fines, forfeitures, &c., which are sought to be made in this account must be proved by proper entries made in the Official Log Book. S. 171.

15. Upon paying off or discharging any Seaman, the Master is bound under a Penalty of £10 to give the Seaman a Certificate of Discharge; and the Master is also bound under a Penalty of £20 to return to any certificated Mate or Engineer upon his discharge his Certificate of Competency or Service. S. 172.

16. A statement of the conduct, character and qualification of each Member of the Crew, or a statement that he declines to give an opinion on such particulars, is to be entered in this List and signed by the Master. S. 173.

Name of

PARTICULARS OF ENGAGEMENT.

Reference No.	Signatures of Crew. 1	Age. 2	Nationality.(y) 3	If in the Reserve, No. of Commission or R. V. 2. 4	Ship in which he last served, and Year of Discharge therefrom. Year. 5	Ship in which he last served, and Year of Discharge therefrom. State Name and Official No. or Port she belonged to. 6	Date and Place of signing this Agreement. Date. 7	Date and Place of signing this Agreement. Place. 8	In what capacity engaged, and if Master, Mate, or Engineer (z), No. of Certificate. 9	Time at which he is to be on board. 10
1	Master to sign first.								Master.	

ACCOUNT OF APPRENTICES

Christian and Surnames of the Apprentices at full length. 1	Year of Birth. 2	Place of Birth. 3	Registry of Indenture. Date. 4	Registry of Indenture. Port. 5

BIRTHS.

COLUMNS TO BE FILLED IN BY THE OFFICER

Date of Birth. 1	Christian Name (if any) of the Child. 2	Sex 3	Christian Name and Surname of Father. 4	Rank, Profession, or Occupation of Father. 5	Christian Name and Surname of Mother. 6

DEATHS, other than

COLUMNS TO BE FILLED IN BY THE OFFICER

Death. Date. 1	Death. Place. 2	Christian Name and Surname of Deceased. 3	Sex. 4	Age. 5	Rank, Profession, or Occupation. 6	Nationality (stating birthplace). 7

(d) DEATHS of Members

COLUMNS TO BE FILLED IN BY THE OFFICER

Death. Date. 1	Death. Place. 2	Christian Name and Surname of Deceased. 3	Sex. 4	Age. 5	Rating. 6	Nationality (stating Birthplace). 7

CERTIFICATES

Or Indorsements made by Consuls or by Superintendents of Mercantile Marine Offices.

(y) If a British subject state Town or Country of Birth, and if born in a foreign country, state whether a natural born British subject or naturalised.

(z) Engineers not employed on the Propelling Engines and Boilers should be described as Engine Drivers here and in Dis. 1. Persons serving as Engineers in charge of Refrigerators should be described as Refrigerating Engineers.

(a) Should the Rate of Wages in any case be altered during the continuance of this Agreement, a fresh entry should be made, which the Seaman should sign.

(b) If any Member of the Crew enters her Majesty's Service, the name of the Queen's Ship into which he enters is to be

*Ship*_____

				PARTICULARS OF DISCHARGE, &c. *To be filled in by the Master upon the Discharge, Death, or Desertion of any Member of his Crew.*				RELEASE (late M).		Report of Character(c).		
Amount of Wages per Week or Calendar Month.(a)	Advance agreed to.	Amount of Weekly or Monthly Allotment.	Signature or Initials of Official or other Witness to the Engagement.	Date, Place, and Cause of leaving this Ship, or of Death.			Balance of Wages paid on Discharge.	We, the undersigned Members of the Crew of this Ship, do hereby release this Ship, and the Master and Owner or Owners thereof, from all Claims for Wages, or otherwise in respect of this Voyage, and I, the Master, do hereby release the said undersigned Members of the Crew from all claims in respect of the said Voyage. Signatures of Master and Crew (each to be on the Line on which he signed in Col. 1.)	Signature or Initials of Official or other Witness to the Discharge.	For Ability.	For General Conduct.	Reference No.
				Date.	Place.	Cause (b).						
11	12	13	14	15	16	17	18	19	20	21	22	
												1

ON BOARD (if any).

DATE, PLACE, AND CAUSE OF LEAVING THIS SHIP, OR OF DEATH. (To be filled up by the Master.)		
Date. 6	Place. 7	Cause. 8

IN COMMAND.							COLUMNS TO BE FILLED IN BY OFFICIAL TO WHOM REPORT IS MADE.	
Maiden Surname of Mother.	Nationality.		Last Place of Abode.		Signature of Father or Mother.	Signature of Master.	Port and Country at which Birth was reported.	Signature and Title of Official to whom reported.
	Father.	Mother.	Father.	Mother.				
7	8	9	10	11	12	13	14	15

those of the Crew.

IN COMMAND.			COLUMNS TO BE FILLED IN BY OFFICIAL TO WHOM REPORT IS MADE.	
Last Place of Abode.	Cause of Death. (See Footnotes).(e)	Signature of Master.	Port and Country at which Death was reported.	Signature and Title of Official to whom reported.
8	9	10	11	12

of the Crew.

IN COMMAND.			COLUMNS TO BE FILLED IN BY OFFICIAL TO WHOM REPORT IS MADE.	
Last Place of Abode.	Cause of Death (See Footnotes).(e)	Signature of Master.	Port and Country at which Death was reported.	Signature and Title of Official to whom reported.
8	9	10	11	12

PARTICULARS OF VOYAGES.

☞ A Statement of the Dates of Departure and Dates of Arrival at the several ports must be entered under this heading.

From		To	
Date of Departure.	Port.	Date of Arrival.	Port.

to accompany this Return in a separate form W & E 1, which will be furnished by the Superintendent. If any Master fails to give a true account of these particulars, he will be liable to forfeit a sum not exceeding treble the value of the money and effects not accounted for, or to a penalty not exceeding £50.

NOTE.—If a birth or death occurs, and the Agreement is not finally delivered up at the next Port of arrival, a duplicate report should be made on Form B and D 1.

(e) 1. If the cause of death is from Disease, the name or nature of the same should be stated.

2. When the cause of death is Accidental, the circumstances attending the accident should be fully stated.

3. If at the time of an accidental death the vessel sustained any damage, loss of gear, cargo, &c., the nature of such damage or loss should be stated; if no damage or loss was sustained it should be so stated.

4. When the death is occasioned by any other cause, *e.g.*, murder, suicide, &c., full particulars of the same should be

C.—ENG. 6a.

ISSUED BY
THE BOARD OF TRADE,
January, 1893.
In pursuance of
17 & 18 Vict., c. 104.

SPECIAL HALF-YEARLY AGREEME

OF SHIPS ENGAGED IN THE HOME TRA

[This Form differs from the preceding in omitting the name, &c., of the Ship, Master, a Managing Owner, and the table for "Particulars of Voyages." It also contains the follow tables to be filled up, differing materially from those of the preceding Form.]

In Witness whereof the said Parties have subscribed their Names on the other Side Sides hereof on the days against their respective Signatures mentioned.

_____ *Master's Signatu*

Descripti

Reference No.	Official Number.	NAME OF VESSEL.	Port of Registry.	Port No. and Date of Register.	Register Tonnage.	Nominal Horse Power of Engines.	No. of Seamen for whom accommodation is certified. 30 & 31 Vict., c. 124.	Distance in feet centre of the load line in salt wa of lines indicating decks ab	
								1st Deck above it	
								ft.	in.
1									
2									
3									
4									
5									

Reference No.	Official Number.	NAME OF VESSEL.	ANALYSIS OF CREWS.												
			Sailors' Department.				Engineers' Department			Surgeons.	Stewards' Department.			Other Persons.	TOTAL.
			Officers, including Master.	Petty Officers.	Sailors.	Apprentices and Boys.	Officers.	Firemen and Trimmers.	Other Persons.		Pursers, Clerks, Storekeepers, &c.	Stewards, &c.	Stewardesses and other Women.		
1															
2															
3															
4															
5															

AND ACCOUNT OF VOYAGES AND CREW

ONLY AND BELONGING TO THE SAME OWNER.

Date and place of First Signature of Agreement, including name of Shipping Office (if one is used).

This Column to be filled in by the Owner.
I hereby declare to the truth of the Entries in this Agreement and Account of Crew, &c.
_____ *Owner.*

of Vessels.

inches between the showing the maximum and the upper edge position of the ship's that centre.	Name and Address of the Registered Managing Owner or Person appointed under the 38 & 39 Vict. c. 88.	MASTERS.		
2nd Deck above it.		Name.	No. of Certificate.	Address.
ft. in.				

EMPLOYMENT OF VESSELS.				
State whether the Vessels were employed upon the under-mentioned Days.				NATURE OF EMPLOYMENT OF SHIPS DURING THE HALF-YEAR.
15th March.	15th June.	15th September.	15th December.	

[Here follow Particulars of Engagement, &c.

No. 8 (see §§ 525, 614).

A.—MEDICAL SCALE FOR MERCHANT SHIPS.

SCALE OF MEDICINES AND MEDICAL STORES, issued and caused to be published by the Board of Trade in pursuance of the Merchant Shipping Act, 1867. (Revised, March 1892.)

Preparations from British Pharmacopœia, 1867. This Column is added for the use of Druggists supplying the Medicines indicated.	Names of Medicines. Medicaments, &c.	Proportion for Ships carrying the under-mentioned No. of Men and Boys (for 12 months).		
		10 and under.	11 to 20 inclusive.	21 and upwards.
	Alum	1 oz.	2 oz.	3 ozs.
Copaiba	Balsam of copaiba	4 ozs.	8 ,,	12 ,,
	Bicarb. of soda	8 ,,	12 ,,	16 ,,
*Mist. Sennæ Co.	Black draught	1 pint	2 pints	3 pints
Lotio Hydrarg. Nigra	Black wash	1 ,,	2 ,,	2 ,,
A liquid containing not less than 80 per cent. of free Carbolic or Cresylic Acid	†Carbolic acid or other disinfectant of approved quality	1 gal.	2 gals.	4 gals.
A liquid containing Permanganate of Potash or Soda equivalent to not less than 2·5 per cent. of Permanganate of Potash.	‡Crimson fluid	½ pint	1 pint	1 pint
	Castor oil	1 lb.	2 lbs.	3 lbs.
Potassæ Tartras Acida	Cream of Tartar	2 ozs.	4 ozs.	8 ozs.
	Epsom salts	3 lbs.	6 lbs.	12 lbs.
Ess. Menth. Pip.	Essence of peppermint	—	1 oz.	2 ozs.
Tr. Zingib. Fortior	,, ginger	—	1 ,,	2 ,,
Liq. Plumbi Subacet.	Goulard's extract	1 oz.	2 ozs.	4 ,,
	Iodide of potassium	—	2 ,,	4 ,,
Tr. Opii	Laudanum	2 ozs.	4 ,,	8 ,,
	Linseed meal	—	14 lbs.	28 lbs.
Argenti Nitras	Lunar caustic	¼ oz.	½ oz.	1 oz.
	Nitrate of potash	2 ozs.	4 ozs.	8 ozs.
Ung. Resinæ	Ointment, Basilicon	3 ,,	6 ,,	10 ,,
,, Hydrargyri	Do. Mercurial	1 oz.	2 ,,	4 ,,
,, Simplex	Do. Simple	6 ozs.	12 ,,	16 ,,
,, Gallæ cum Opio	Ointment of galls and opium	1 oz.	2 ,,	4 ,,
,, Sulph.	Ointment of Sulphur	6 ozs.	12 ,,	16 ,,
	Iodoform	2 drs.	4 drs.	6 drs.
	Salicine	2 ozs.	4 ozs.	6 ozs.
Sp. Ammon. Aromat	Aromatic Spirits of Ammonia	4 ,,	6 ,,	8 ,,
Liq. Epispasticus	Blistering fluid	1 oz.	1 oz.	1 oz.
	Olive oil	—	8 ozs.	12 ozs.
Lin. Opii	Opodeldoc	3 ozs.	6 ,,	10 ,,
Tr. Camph. Co.	Paregoric	4 ,,	6 ,,	8 ,,
Pil. Hydrarg 5 gr.	Pills, Blue	1 doz.	2 doz.	3 doz.
,, Ipecac. c. Scillâ 5 gr.	Do. Cough	2 ,,	4 ,,	6 ,,
,, Sapon. Co. 5 gr.	Do. Opium	1 ,,	2 ,,	3 ,,
,, Coloc. c. Hyosc. 5 gr.	Do. Purging	3 ,,	6 ,,	8 ,,
,, Rhei Co. 5 gr.	Do. do. Mild	3 ,,	6 ,,	8 ,,
Pulv. Rhei Co.	Powder, comp. rhubarb	2 ozs.	4 ozs.	8 ozs.

* Omit extract of liquorice, and substitute aromatic spirit of ammonia, 1 oz. to 1 pint of the mixture.

† As antiseptic and deodorising agents for common use. Samples of the disinfectants supplied will be occasionally taken for analysis, to determine whether they fulfil the requirements of the Board of Trade.

‡ For purifying drinking water when necessary.

Preparations from British Pharmacopœia, 1867. This column is added for the use of Druggists supplying the Medicines indicated.	Names of Medicines. Medicaments, &c.	Proportion for Ships carrying the under-mentioned No. of Men and Boys (for 12 months). 10 and under.	11 to 20 inclusive.	21 and upwards.
Pulv. Catechu Cp. } equal parts.	*Powder, Diarrhœa .	1 oz.	2 oz.	3 oz.
,, Cret. Arom. } equal parts.				
,, c. Opio } equal parts.				
,, Ipecac. Co. . .	Do. Dover's . .	1 ,,	2 ,,	3 ,,
	Do. Ipecacuanha .	1 ,,	2 ,,	3 ,,
	*Quinine . . .	1 ,,	2 ,,	3 ,,
Sp. Ætheris Nitrosi . .	Sweet Spirits of Nitre.	1 ,,	2 ,,	3 ,,
	Sulphate of Zinc . .	1 ,,	2 ,,	3 ,,
	Sulphur (sublimed) .	2 lbs.	3 lbs.	6 lbs.
Tr. Hyoscyami . . .	Tincture of Henbane .	1 oz.	2 oz.	3 oz.
,, Rhei . . .	,, Rhubarb .	4 oz.	10 ,,	12 ,,
Lin. Terebinthinæ . .	Turpentine liniment .	2 ,,	4 ,,	6 ,,
Acid. Sulph. Arom. . .	Elixir of Vitriol . .	4 ,,	6 ,,	10 ,,
Liq. Ammoniæ . . .	Spirits of Hartshorn .	4 ,,	6 ,,	10 ,,
	Bromide of Potassium .	3 ,,	5 ,,	8 ,,
	Chloric Ether . .	3 ,,	5 ,,	8 ,,
Pulv. Jalapæ . .	Powder of Jalap . .	3 ,,	5 ,,	8 ,,
	Camphor . . .	2 ,,	4 ,,	6 ,,
Tr. Ferri Perchloridi .	Tinct. of Steel .	3 ,,	6 ,,	8 ,,
Tr. Benzoini Co. . .	Friar's Balsam . .	6 ,,	6 ,,	6 ,,

Particulars.	Scales of Medical Stores and Necessaries.	Proportion for Ships carrying the under-mentioned No. of men and Boys (for 12 months). 10 and under.	11 to 20 inclusive.	21 and upwards.
	Adhesive plaster on unbleached calico in tin case . . .	1 yard	2 yards	3 yards
	Lint	½ lb.	¾ lb.	1 lb.
1 *grain*, 2 *grains*, &c., must be stamped in English figures and words on each respective weight, the word *scruple* must not be used at all (the scruple weight being marked 20 *grains*), the ½ *dram*, 1 *dram*, and 2 *dram* weights must be also marked in English figures and words.	Scales and weights .	1 set	1 set	1 set
The fluid drop measure must be marked *dram* and divided into 40 *drops*, the word *minim* being omitted altogether.	Graduated drop measure	1	1	1
The fluid 2 oz. measure must be marked 2 *ounces*, 1 *ounce*, 2 *table spoonfuls*, 1 *table spoonful*, and 1 *tea spoonful*.	Graduated 2-oz. measure	1	1	1
	6-oz. bottles. . .	½ doz.	½ doz.	1 doz.
	Corks for bottles .	1 ,,	1½ ,,	2 ,,

* Treble the quantity above indicated to be taken to all tropical ports.

Particulars.	Scales of Medical Stores and Necessaries.	Proportion for Ships carrying the under-mentioned No. of Men and Boys (for 12 months).		
		10 and under.	11 to 20 inclusive.	21 and upwards.
	Scissors	1 pair	1 pair	1 pair
	Syringes	2	2	4
	Lancet	1	1	1
	Abscess do.	1	1	1
Leg and arm size	Bandages	3	6	6
Triangular bandage, base 48 ins., sides 33 ins. each.	Triangular do.	2	3	4
Flannel bandage, 7 yards long, 6 ins. wide	Flannel do.	1	1	2
	Calico	3 yards	4 yards	6 yards
	Flannel	2 ,,	3 ,,	6 ,,
	Needles, pins, thread, and tape	1 paper	1 paper	1 paper
	Splints, common	1 set	1 set	1 set
Printed directions for use	Enema syringe	1	1	1
	Pewter cup	—	1	1
	Teaspoon (pewter)	—	1	1
	Bougies	1 set	1 set	1 set
	Esmarch's tourniquet (plain, with hooks)	1	1	1
	Gum elastic catheter	Complete set.		
36 in. Single Reversible	Trusses	1	2	3
	Sponges	1	2	3
	Plaster of Paris, for bandages	1 lb.	1 lb.	1 lb.
	Bed-pan	—	1	1
	Authorised Book of Directions for Medicine Chests (The Ship Captain's Medical Guide, latest edition)	1	1	1
	Oatmeal groats, crushed	4 lbs.	8 lbs.	16 lbs.
	Arrowroot	2 ,,	4 ,,	8 ,,
	Pearl barley	4 ,,	8 ,,	16 ,,
	Corn flour	4 ,,	8 ,,	16 ,,
	Rice	4 ,,	8 ,,	16 ,,
	Or Sago	4 ,,	8 ,,	16 ,,
	Or Cerealine	4 ,,	8 ,,	16 ,,
	Sugar	14 ,,	28 ,,	56 ,,
	Soup and bouilli	6 ,,	12 ,,	24 ,,
	Boiled mutton	6 ,,	12 ,,	24 ,,
	Essence of meat ($\frac{1}{4}$ pint)	6 tins	12 tins	24 tins
Preserve	Desiccated soup	4 lbs.	8 lbs.	16 lbs.
	Vegetables, dried or compressed	4 ,,	8 ,,	16
	Potato (if not in scale of provisions)	14 ,,	28 ,,	56 ,,
	Wine (Port)	3 bottls.	6 bottls.	12 bottls.
	Brandy	2 ,,	4 ,,	6 ,,
	Stout	4 doz. pints.	2 doz. pints.	6 doz. pints.

B.—MEDICAL SCALE FOR PASSENGER SHIPS (§ 614).

SCALE of MEDICINES, MEDICAL STORES, INSTRUMENTS, and MEDICAL COMFORTS, for SHIPS clearing under the Passengers Acts other than Steam Ships engaged in the North Atlantic Trade. (Revised, March, 1892.)

N.B—There is a separate Scale for North Atlantic Steam Passengers Ships.(*f*)

For every 100 passengers, where the length of the Passage, computed according to the Passengers Act, is under 100 days. Where the length of Passage is over 100 days, the quantities of Medicines and Medical comforts to be increased by one half.

Directions for Druggists.	Articles.	Quantities per 100 Passengers. Pts. or lbs.	oz.	drs.
The medicines to be prepared and plainly labelled in Latin and English names according to the British Pharmacopœia, and the official dose for an adult given in the Pharmacopœia to be stated on the label. All bottles to be stoppered, and all medicines indicated thus * to be marked with a red poison label. The weights and measures of the British Pharmacopœia to be used.	Acidum boricum	0	2	0
	* ,, carbolicum liquefactum	0	2	0
	,, citricum	0	2	0
	,, gallicum	0	0	4
	* ,, hydrocyanicum dilutum	0	0	2
	* ,, nitro-hydrochloricum dilutum	0	4	0
	* ,, sulphuricum dilutum	0	4	0
	*Æther	0	6	0
	Alumen	0	2	0
	Ammonii carbonas	0	3	0
	*Argenti nitras (in sticks)	0	2	0
	Bismuthi carbonas	0	2	0
	Borax	0	2	0
	Calcii hydras	0	4	0
	Camphor	0	3	0
	*Chloroformum	0	6	0
	Copaiba	0	4	0
	Extractum cascaræ sagradæ liquidum	0	2	0
	Extractum cinchonæ liquidum	0	2	0
	,, ergotæ liquidum	0	2	0
	,, filicis liquidum	0	1	0
	Ferri et ammonii citras	0	1	0
	,, et quininæ citras	0	1	0
	Glycerinum	0	6	0
	,, acidi tannici	0	2	0
	*Hydrargyri subchloridum	0	0	2
	Hydrargyrum cum cretâ	0	0	4
	*Iodoformum	0	0	4
	Lini farina	6	0	0
	*Linimentum belladonnæ	0	8	0
	* ,, camphoræ compositum	0	6	0
	* ,, iodi	0	1	0
	* ,, opii	0	4	0
	,, saponis	0	12	0
	Liquor ammonii acetatis fortior	0	4	0
	* ,, arsenicalis	0	0	4
	* ,, atropinæ sulphatis	0	0	2
	* ,, epispasticus	0	1	0
	* ,, ferri perchloridi fortior	0	0	4
	* ,, hydrargyri perchloridi	0	6	0
	* ,, morphinæ hydrochloratis	0	1	0

(*f*) Appendix No. 8 C., *post*.

Directions for Druggists.	Articles.	Quantities per 100 Passengers.		
		Pts. or lbs.	oz.	drs.
All bottles to be stoppered, and all medicines indicated thus * to be marked with a red poison label.	*Liquor plumbi subacetatis	0	2	0
	Magnesii sulphas	3	0	0
‖ Omit liquid extract of liquorice, and substitute aromatic spirit of ammonia, 1 oz. to 1 pint of the mixture.	‖Mistura sennæ composita	3	0	0
	*Oleum crotonis	0	0	1
	,, lini	1	0	0
	,, morrhuæ	1	0	0
	,, olivæ	0	8	0
	,, ricini	1	0	0
	* ,, terebinthinæ	0	10	0
	*Opium (powdered)	0	0	2
	Paraffinum-molle (vaseline)	0	8	0
† All pills to be coated with gelatine.	†Pilula colocynthidis composita (5 grs.)	4 doz.		
	,, hydrargyri (5 grs.)	3 ,,		
	,, plumbi cum opio (4 grs.)	1 ,,		
	,, rhei composita (5 grs.)	4 ,,		
	,, saponis composita (5 grs.)	3 ,,		
	,, scillæ composita (5 grs.)	3 ,,		
	Potassii bicarbonas	0	4	0
	,, bromidum	0	4	0
	,, chloras	0	4	0
	,, iodidum	0	4	0
	,, nitras	0	2	0
	,, permanganas	0	4	0
	(The composition of the liquor potassii permanganatis to be expressed on the bottle.)			
	Pulvis cretæ aromaticus	0	4	0
	* ,, ,, ,, cum opio	0	2	0
	,, glycyrrhizæ compositus	0	4	0
	,, ipecacuanhæ	0	1	0
	* ,, ,, compositus	0	1	0
	,, jalapæ compositus	0	1	0
	Quininæ sulphas	0	1	0
	Salicinum	0	1	0
	Santoninum	0	0	4
	Sodii bicarbonas	0	6	0
	,, salicylas	0	3	0
	Spiritus ætheris nitrosi	0	4	0
	,, ammoniæ aromaticus	0	6	0
	,, chloroformi	0	3	0
	,, menthæ-piperitæ	0	1	0
	,, rectificatus	0	6	0
	*Syrupus chloral	0	10	0
	Tinctura arnicæ	0	1	0
	* ,, belladonnæ	0	1	0
	,, benzoini composita	0	2	0
	,, camphoræ composita	0	4	0
	,, cardamomi composita	0	8	0
	,, catechu	0	4	0
	,, digitalis	0	1	0
	* ,, ferri perchloridi	0	2	0
	,, gentianæ composita	0	6	0
	,, hyoscyami	0	3	0
	* ,, nucis vomicæ	0	2	0
	* ,, opii	0	3	0
	,, rhei	0	4	0
	,, scillæ	0	2	0
	,, senegæ	0	4	0
	,, zingiberis fortior	0	1	0
	Unguentum cetacei	0	8	0
	,, gallæ cum opio	0	2	0

Directions for Druggists.	Articles.	Quantities per 100 Passengers.		
		Pts. or lbs.	oz.	drs.
All bottles to be stoppered, and all medicines indicated thus * to be marked with a red poison label.	Unguentum hydrargyri . . .	0	4	0
	,, hydrargyri ammoniati	0	2	0
	,, hydrargyri nitratis dilutum . .	0	1	0
	,, sulphuris . .	0	10	0
	,, zinci . . .	0	8	0
	*Vinum antimoniale .	0	1	0
	,, colchici . . .	0	2	0
	,, ipecacuanhæ . .	0	4	0
	Zinci oxidum . . .	0	4	0
	,, sulphas . . .	0	1	0
	*Antipyrin	0	0	4
	Hypodermic injection case, with syringe and tablets or discs of—			
	Sulphate or hydrochlorate of morphine ($\frac{1}{4}$ gr.) . . .	2 doz.		
	Sulphate of atropine ($\frac{1}{100}$ gr.)	1 doz.		
	Hydrochlorate of cocaine ($\frac{1}{4}$ gr.)	2 doz.		
‡ A powder containing not less than 20 per cent. of pure carbolic or cresylic acid. The powder to be securely packed in tin canisters containing not more than 4 lbs. in each tin. § A liquid containing not less than 80 per cent. of free carbolic or cresylic acid.	†Disinfectants—			
	‡Carbolic acid powder, or other disinfectant powder of approved quality . . .	1 cwt.		
	§Commercial carbolic acid, or other disinfectant of approved quality	2 galls.		
	Sulphur for fumigation . .	5 lbs.		

† Samples of the disinfectants supplied will be occasionally taken for analysis to determine whether they fulfil the requirements of the Board of Trade.

MEDICAL STORES.

Directions for Druggists.	Articles.	Quantities per 100 Passengers.
	Lint	12 oz.
	Strapping (Rubber plaster)	3 yds.
	Tow	1 lb.
	Sponges	4
	Bed-pan	1
6 yards long, 3 inches wide	Leg and arm bandages	2 doz.
6 „ 6 „	Flannel ditto	3
Base 48 ins., sides 33 ins. each.	Triangular ditto	3
	Calico for bandages	3 yds.
	Flannel	3 „
	Sublimate wood wool	1 lb.
	Iodoform absorbent gauze	2 yds.
** Only the quantities named of these articles to be provided irrespective of the number of passengers.	**Oiled silk, or substitute prepared by Messrs. Christy & Co.	1 „
	**Waterproof sheeting	4 „
	Trusses (reversible 30 in. and 36 in.)	2
	**Safety pins	5 doz.
	Plaster of Paris for bandages	1 lb.
	**Set of Cline's splints	1
	**MacIntyre's splint	1
‖‖ Under 500 passengers 4 sq. ft.	‖‖ Cardboard or perforated felt for splints	—
Over 500 passengers 6 sq. ft.	**Minim measure	2
	**Ounce ditto	1
	**3 ounce ditto	2
	**Stomach pump, with double action	1
†† Under 500 passengers 2.	††Higginson's enema syringes	—
Over „ „ 4.	Glass or pewter syringes, 1 oz.	6
	**Box of small scales and weights	1
	**Wedgwood mortar and pestle	1
	**Wedgwood funnels	2
	**Spatulas	2
	Bottles for medicine, 2 oz.	1 doz.
	„ „ 8 oz.	2 „
‡‡ Under 500 passengers 1 doz.	‡‡Fluted bottles for external application, 2 oz.	—
Over 500 passengers 2 doz.	‡‡Fluted bottles for external application, 10 oz.	—
	Corks, assorted	6 doz.
	Gallipots	6
	Packets of nested pill boxes	1
	Blank labels	6 doz.
	Poison labels	2 doz.
	**Dispensary paper (white demy).	1 qr.
	Camel's hair pencil brushes	3
	**Æther inhaler	1
	**Urinary test case (containing urinometer, spirit lamp, litmus paper, 12 test tubes, nitric acid, and cupric test for sugar).	
§§ Under 500 passengers 2 doz.	§§Vaccine lymph in tubes	—
Over 500 passengers 4 doz.	**Authorised Book of Directions for Medicine Chests ("The Ship Captain's Medical Guide" latest edition).	
	**British Pharmacopœia.	

INSTRUMENTS.

In pocket case.
- 1 Artery forceps.
- 1 Dressing do.
- 1 Finger knife.
- 1 Curved bistoury, sharp pointed.
- 1 „ „ blunt pointed.
- 2 Probes.
- 1 Silver director.
- 1 Caustic case.
- 1 Scissors.
- 1 Spatula.
- 2 Lancets.
- 1 Gum lancet.
- 12 Needles.
- 1 Tablet of silk with four sizes.

1 Fergusson's small saw.
1 Amputating saw.
2 „ knives.
1 Pair large dissecting forceps.
1 Bone forceps.
2 Pairs Wells' pressure forceps.
1 Trephine.
1 Elevator.
1 Trephine brush.
2 Scalpels.
1 Hernia knife.
1 „ director.
2 Trocars and canulas.
1 Aneurism needle.
1 Set tooth instruments (7 forceps in leather roll).
1 Set tracheotomy instruments (3 double tubes and trachea dilator).
1 Set midwifery instruments (long forceps).
1 Esmarch's tourniquet (plain with hooks).
1 Œsophageal probang with bristles.
1 Aspirator with 2 needles in case.
1 Skein chromicised catgut.
1 Reel silver wire.
3 Silver catheters (Nos. 4 and 8; and No. 12 with prostatic curve).
2 Sets of Nos. 3, 5, 9, and 12 soft olive-headed catheters.
1 Clinical thermometer.
1 Stethoscope.

MEDICAL COMFORTS.

Articles.	Quantities for 100 Passengers.
Arrowroot	14 lbs.
Pearl barley	10 lbs.
Semolina	10 lbs.
Nursery biscuits or rusks	10 lbs.
Oatmeal groats	10 lbs.
Loaf sugar	28 lbs.
Essence of beef, of approved quality	20 ¼-lb. tins.
Condensed milk, of approved quality	30-lb. tins.
Brandy	1 gallon.
Stout	5 dozen pints.
Lime juice (for sailing ships only)	1 gallon.

C.—MEDICAL SCALE FOR NORTH ATLANTIC STEAM SHIPS.

SCALE OF MEDICINES, MEDICAL STORES, INSTRUMENTS, AND MEDICAL COMFORTS FOR NORTH ATLANTIC STEAM SHIPS only, where the voyage, computed according to the Passengers Act, does not exceed 37 days. (Revised, March 1892.)

N.B.—There is a separate scale for longer voyages.(g)

Directions to Druggists.	Articles.	1 For 100 Passengers.	2 For 250 Passengers.	3 For 500 Passengers.	4 For 750 Passengers and upwards.
The medicines to be prepared plainly labelled in Latin and English names according to the British Pharmacopœia, and the official dose for an adult given in the Pharmacopœia to be stated on the label. All bottles to be stoppered, and all medicines indicated thus* to be marked with a red poison label. The weights and measures of the British Pharmacopœia to be used.	Acidum boricum	1 oz.	2 oz.	3 oz.	4 oz.
	„ carbolicum liquefactum	1 „	2 „	3 „	4 „
	„ citricum	2 „	4 „	6 „	8 „
	„ nitro-hydrochloricum dilutum	2 „	4 „	6 „	8 „
	„ sulphuricum dilutum	2 „	4 „	6 „	8 „
	*Æther	3 „	6 „	9 „	12 „
	Ammonii carbonas	1 „	2 „	3 „	4 „
	*Argenti nitras (in sticks)	2 drs.	2 drs.	2 drs.	4 drs.
	Bismuthi carbonas	1 oz.	2 oz.	3 oz.	4 oz.
	Calcii hydras	4 „	8 „	12 „	16 „
	Camphor	1 „	2 „	3 „	4 „
	*Chloroformum	3 „	6 „	9 „	12 „
	Extractum cascaræ sagradæ liquidum	1 „	2 „	3 „	4 „
	„ cinchonæ liquidum	1 „	2 „	3 „	4 „
	„ ergotæ liquidum	2 „	2 „	4 „	4 „
	Glycerinum	4 „	6 „	8 „	12 „
	*Hydrargyri subchloridum	2 drs.	4 drs.	6 drs.	8 drs.
	Hydrargyrum cum cretâ	2 „	4 „	6 „	8 „
	*Iodoformum	½ oz.	½ oz.	1 oz.	1 oz.
	Lini farini	7 lbs.	14 lbs.	28 lbs.	28 lbs.
	*Linimentum belladonnæ	6 oz.	9 oz.	12 oz.	16 oz.
	* „ camphoræ compositum	6 „	9 „	12 „	16 „
	* „ iodi	1 „	2 „	3 „	4 „
	* „ opii	6 „	9 „	12 „	16 „
	„ saponis	8 „	12 „	16 „	20 „
	Liquor ammonii acetatis fortior	4 „	6 „	8 „	10 „
	* „ arsenicalis	½ „	½ „	1 „	1 „
	* „ epispasticus	1 „	1 „	2 „	2 „
	* „ ferri perchloridi fortior	⅓ „	⅓ „	1 „	1 „
	* „ hydrargyri perchloridi	4 „	6 „	8 „	12 „
	* „ plumbi subacetatis	1 „	2 „	3 „	4 „
	Magnesii sulphas	2 lbs.	4 lbs.	8 lbs.	16 lbs.
	Mistura sennæ composita	2 pts.	4 pts.	8 pts.	16 pts.
	*Oleum crotonis	1 dr.	1 dr.	1 dr.	1 dr.
	„ lini	1 pt.	2 pts.	3 pts.	4 pts.
	„ olivæ	4 oz.	6 oz.	8 oz.	12 oz.
	„ ricini	1 pt.	1 pt.	2 pts.	2 pts.
	„ terebinthinæ	10 oz.	15 oz.	20 oz.	20 oz.
	*Opium (powdered)	2 drs.	4 drs.	6 drs.	8 drs.
	Paraffinum molle (vaseline)	8 oz.	8 oz.	16 oz.	16 oz.
†All pills to be coated with gelatine.	†Pilula colocynthidis composita (5 grs.)	4 doz.	6 doz.	8 doz.	10 doz.
	„ hydrargyri (5 grs.)	3 „	4 „	6 „	8 „
	„ plumbi cum opio (4 grs.)	3 „	4 „	6 „	8 „
	„ rhei composita (5 grs.)	4 „	6 „	8 „	12 „
	„ saponis composita (5 grs.)	3 „	4 „	6 „	8 „
	Potassii bicarbonas	4 oz.	8 oz.	12 oz.	16 oz.
	„ bromidum	4 „	8 „	12 „	16 „
	„ chloras	4 „	8 „	12 „	16 „
	„ iodidum	4 „	8 „	12 „	16 „
	„ nitras	2 „	4 „	6 „	8 „
	„ permanganas (The composition of the liquor potassii permanganatis to be expressed on the bottle.)	4 „	8 „	12 „	16 „
	Pulvis cretæ aromaticus	4 „	6 „	8 „	12 „
	* „ „ „ cum opio	2 „	4 „	6 „	8 „
	„ glycyrrhizæ compositus	4 „	6 „	8 „	12 „
	„ ipecacuanhæ	2 drs.	4 drs.	6 drs.	8 drs.
	* „ „ compositum	4 „	6 „	8 „	12 „

(g) Appendix No. 8 B, *ante*.

MEDICAL SCALES.

Directions to Druggists.	Articles.	1 For 100 Passengers.	2 For 250 Passengers.	3 For 500 Passengers.	4 For 750 Passengers and upwards.
	Quininæ sulphas	1 oz.	2 oz.	3 oz.	4 oz.
	Salicinum	1 ,,	2 ,,	3 ,,	4 ,,
	Sodii bicarbonas	4 ,,	8 ,,	12 ,,	16 ,,
	,, salicylas	4 ,,	6 ,,	8 ,,	10 ,,
	Spiritus ætheris nitrosi	4 ,,	6 ,,	8 ,,	12 ,,
	,, ammoniæ aromaticus	6 ,,	10 ,,	15 ,,	20 ,,
	,, chloroformi	3 ,,	4 ,,	6 ,,	8 ,,
	,, menthæ-piperitæ	1 ,,	1 ,,	2 ,,	2 ,,
	,, rectificatus	6 ,,	8 ,,	10 ,,	12 ,,
*To be marked with a red poison label. *See* directions in col 1, page [696].	*Syrupus chloral	5 ,,	10 ,,	15 ,,	20 ,,
	Tinctura arnicæ	1 ,,	2 ,,	3 ,,	4 ,,
	,, benzoini composita	2 ,,	4 ,,	6 ,,	8 ,,
	,, camphoræ composita	8 ,,	12 ,,	16 ,,	20 ,,
	,, cardamomi composita	8 ,,	12 ,,	16 ,,	20 ,,
	,, catechu	4 ,,	6 ,,	8 ,,	12 ,,
	* ,, digitalis	1 ,,	2 ,,	3 ,,	4 ,,
	* ,, ferri perchloridi	2 ,,	4 ,,	6 ,,	8 ,,
	,, hyoscyami	2 ,,	4 ,,	6 ,,	8 ,,
	* ,, opii	2 ,,	4 ,,	6 ,,	8 ,,
	,, rhei	4 ,,	6 ,,	8 ,,	12 ,,
	,, scillæ	2 ,,	4 ,,	6 ,,	8 ,,
	,, senegæ	4 ,,	8 ,,	12 ,,	16 ,,
	,, zingiberis fortior	1 ,,	1 ,,	2 ,,	2 ,,
	Unguentum cetacei	8 ,,	12 ,,	16 ,,	20 ,,
	,, gallæ cum opio	2 ,,	3 ,,	4 ,,	6 ,,
	,, sulphuris	10 ,,	15 ,,	20 ,,	20 ,,
	,, zinci	8 ,,	12 ,,	16 ,,	20 ,,
	*Vinum antimoniale	1 ,,	1 ,,	2 ,,	2 ,,
	,, colchici	2 ,,	2 ,,	4 ,,	4 ,,
	,, ipecacuanha	4 ,,	6 ,,	8 ,,	12 ,,
	Zinci oxidum	1 ,,	2 ,,	3 ,,	4 ,,
	,, sulphas	1 ,,	2 ,,	3 ,,	4 ,,
	*Antipyrin	½ ,,	½ ,,	1 ,,	1 ,,
	Hypodermic injection case, with syringe and tablets or discs of—				
	Sulphate or hydrochlorate of morphine ($\frac{1}{4}$ gr.).	2 doz.	3 doz.	4 doz.	6 doz.
	Sulphate of atropine ($\frac{1}{100}$ gr.).	1 ,,	1 ,,	2 ,,	2 ,,
	Hydrochlorate of cocaine ($\frac{1}{4}$ gr.).	2 ,,	4 ,,	6 ,,	8 ,,
‡A powder containing not less than 20 per cent. of pure carbolic or cresylic acid. The powder to be securely packed in tin canisters containing not more than 4 lbs. in each tin. §A liquid containing not less than 80 per cent. of free carbolic or cresylic acid.	†Disinfectants—				
	‡Carbolic acid powder, or other disinfectant powder of approved quality.	1 cwt.	2 cwt.	3 cwt.	4 cwt.
	§Commercial carbolic acid, or other disinfectant of approved quality.	1 gal.	2 gals.	3 gals.	4 gals.
	Sulphur for fumigation	5 lbs.	10 lbs.	20 lbs.	30 lbs.

† Samples of the disinfectants supplied will be occasionally taken for analysis to determine whether they fulfil the requirements of the Board of Trade.

Medical Stores.

Directions to Druggists.	Articles.	1 For 100 Passengers.	2 For 250 Passengers.	3 For 500 Passengers.	4 For 750 Passengers and upwards.
	Lint	6 oz.	10 oz.	15 oz.	20 oz.
	Strapping (Rubber plaster)	2 yds.	3 yds.	4 yds.	6 yds.
	Sponges	6	6	12	12
	Bed-pan	2	2	4	4
6 yds. long, 3 in. wide	Leg and arm bandages	1 doz.	2 doz.	3 doz.	4 doz.
6 ,, 6 ,,	Flannel ditto	2	3	4	5
Base 48 in., sides 33 in. each.	Triangular ditto	2	2	2	2
	Calico for bandages	3 yds.	4 yds.	5 yds.	6 yds.
	Sublimate wood wool	1 lb.	2 lbs.	3 lbs.	4 lbs.
	Iodoform absorbent gauze	2 yds.	2 yds.	5 yds.	5 yds.
	Oiled silk, or substitute prepared by Messrs. Christy & Co.	1 yd.	1 yd.	1 yd.	1 yd.
	Safety pins	3 doz.	3 doz.	6 doz.	6 doz.
	Plaster of Paris for bandages	1 lb.	2 lbs.	3 lbs.	5 lbs.
	Set of Cline's splints	1	1	1	1
	MacIntyre's splint	1	1	1	1
	Cardboard, gutta-percha, or perforated felt for splints	2 sq. ft.	2 sq. ft.	4 sq. ft.	4 sq. ft.
	Minim measure	2	2	2	2
	Ounce ,,	1	1	1	1
	3 ounce ,,	1	1	1	1
	Stomach pump with double action	1	1	1	1
	Higginson's enema syringe	1	1	2	2
	Glass or pewter syringes, 1 oz.	6	9	12	15
	Box of small scales and weights	1	1	1	1
	Wedgwood mortar and pestle	1	1	1	1
	,, funnels	2	2	2	2
	Spatulas	2	2	2	2
	Bottles, for medicines, 2 oz.	1 doz.	2 doz.	3 doz.	3 doz.
	,, ,, 8 oz.	2 ,,	4 ,,	6 ,,	8 ,,
	Fluted bottles for external applications, 2 oz.	1 ,,	1 ,,	2 ,,	2 ,,
	,, ,, 10 oz.	1 ,,	1 ,,	2 ,,	2 ,,
	Corks, assorted	6 ,,	10 ,,	15 ,,	20 ,,
	Chip ointment boxes	1 ,,	1 ,,	2 ,,	2 ,,
	Packets of nested pill boxes	1	2	3	4
	Blank labels	6 doz.	10 doz.	15 doz.	20 doz.
	Poison labels	2 ,,	4 ,,	6 ,,	8 ,,
	Dispensary paper, white demy	½ qr.	½ qr.	1 qr.	1 qr.
	Camel's hair pencil brushes	3	4	6	6
	Æther inhaler	1	1	1	1
	Urinary test case, containing spirit lamp, 6 test tubes, nitric acid, and cupric test for sugar	1	1	1	1
	Vaccine lymph in tubes	1 doz.	2 doz.	3 doz.	4 doz.
	Authorized Book of Directions for Medicine Chests ("The Ship Captain's Medical Guide," latest edition).				
	British Pharmacopœia.				

Instruments.

In pocket case.
- 1 Artery forceps.
- 1 Dressing „
- 1 Finger knife.
- 1 Curved bistoury sharp pointed.
- 1 „ „ blunt ditto.
- 2 Probes.
- 1 Silver director.
- 1 Caustic case.
- 1 Scissors.
- 1 Spatula.
- 2 Lancets.
- 1 Gum lancet.
- 12 Needles.
- Tablet of silk with 4 sizes.

1 Fergusson's small saw.
1 Amputating saw.
2 „ knives.
1 Pair large dissecting forceps.
1 Bone forceps.
2 Pairs Wells' pressure forceps.
1 Trephine.
1 Elevator.
1 Trephine brush.
2 Scalpels.
1 Hernia knife.
1 „ director.
2 Trocars and canulas.
1 Aneurism needle.
1 Set of tooth instruments (7 forceps) in leather roll.
1 Set of tracheotomy instruments (3 double tubes and trachea dilator).
1 Set midwifery instruments (long forceps).
1 Esmarch's tourniquet (plain with hooks).
1 Œsophageal probang with bristles.
1 Aspirator with two needles in case.
1 Skein chromicised catgut.
1 Reel of silver wire.
3 Silver catheters (Nos. 4 and 8; and No. 12 with prostatic curve).
4 Soft olive-headed catheters (Nos. 3, 5, 9, and 12).
1 Clinical thermometer.
1 Stethoscope.

Medical Comforts.

Articles.	Quantities per 100 Passengers.
Arrowroot	14 lbs.
Pearl barley	7 „
Oatmeal groats	7 „
Semolina	7 „
Nursery biscuits or rusk	5 „
Loaf sugar	28 „
Condensed milk of approved quality	15-lb. tins.
Essence of beef of approved quality	15 ¼-lb. tins.
Brandy	1 gallon.
Stout	3 doz. pt. bottles.

No. 9 (see § 525).

Instructions Respecting Lime and Lemon Juice.

Size of bottles.

14. "The juice, when inspected, bottled, fortified, and labelled, in accordance with the Regulations, will be allowed to be shipped, subject to the following Regulations in regard to the maximum size of bottle, viz. :—

Two-gallon glazed earthenware bottles	To be allowed only for vessels carrying a crew of . .	60 persons or upwards.
One-gallon glazed earthenware bottles		40 persons or upwards.
Half-gallon glass bottles		21 persons or upwards.
Quart glass bottles		20 persons or under.

But quart bottles may be shipped in all cases if preferred."

As to keeping and using.

15. The juice is best kept in a cool place.

The bottles containing it should not be unnecessarily exposed to the heat and light of the sun.

The Medical Officers appointed by the Board of Trade to inspect and test lime and lemon juice recommend that when the juice is served out it should be mixed in the proportion of 1 fluid ounce of lime juice, and 1 ounce of sugar, to not less than half a pint and not more than 1 pint of water, and the mixture should be served out in sufficient quantity to each mess or watch at the dinner hour, so that it may be obtained by the crew in time to drink during their meal. The Medical Officers also recommend that lime and lemon juice should be regarded, not as a medicine, but as a necessary article of ordinary diet.

No. 9A (see § 524).

RULES for the Inspection of Provisions and Water, under "The Merchant Shipping Act, 1892."(*h*)

Application of rules.

1. These rules apply to all ships trading or going from any port of the United Kingdom through the Suez Canal or round the Cape of Good Hope or Cape Horn.

Prescribed officer.

2. The officer to conduct an inspection of ships's stores under the Merchant Shipping Act, 1892, shall be any officer appointed by the Board of Trade for this purpose.

What stores to be inspected.

3. All the different varieties of stores provided or carried in the ship which are referred to in section 3 of the above-mentioned Act, as well as the supply of water, are subject to inspection.

Where new stores to be inspected.

4. New stores shall be inspected before shipment whenever practicable, or alongside the ship in which they are to be used; but, if necessary, they may be inspected on board the ship, or they may in certain cases be inspected in some place provided or approved by the Board of Trade for that purpose, as may be decided by the inspector acting under the instructions of the Board of Trade.

All surplus stores to be inspected.

5. All surplus stores left over from a previous voyage are to be inspected, and the contents of all the casks of wet provisions amongst such surplus stores are to be turned out. Such stores are to be inspected on board or

(*h*) 55 & 56 Vict. c. 37, § 524 *supra*.

alongside the ship, or in such other place as may be provided or approved by the Board of Trade for that purpose, as may be decided by the inspector acting under the instructions of the Board of Trade.

Passed stores sent to another port.

6. Stores carried in the ship in which they are to be used from one port to another port in the United Kingdom, or sent from one port to a ship at another port, which have passed the Board of Trade inspector at the first port, as described in a form of advice (P.W. 8) signed by the inspector who examined them, need not be re-examined; provided always that the official wire and seal remain intact, and that the inspector is satisfied that the packages have not been tampered with.

Notice for inspection when ship is at the port.

7. All notices for inspection of stores to take place at the port where the ship is lying must be made to the inspector of that port, or in such other manner as may from time to time be determined by the Board of Trade, by the owner or agent of the ship on the appropriate form (P.W. 1), which must be filled in and delivered to the inspector at least 48 hours prior to the time at which it is desired that the stores should be inspected.

Notice for inspection of stores sent coastwise.

8. Notice for inspection of stores intended to be used on any voyage mentioned in the Act, but which it is proposed to carry to some other port in the United Kingdom from which the vessel is to take her final departure, or stores intended to be sent to a ship at some other port in the United Kingdom, may be made by the firm supplying such stores direct to the inspector at the port where such stores may be. The notice must be given at least 48 hours previously on the form (P.W. 2) provided for the purpose.

List of stores to be supplied.

9. Prior to the inspection, a complete list of all the stores must be supplied to the inspectors.

Time of inspection.

10. Stores will be inspected at any time during daylight after 10 A.M. up to 5 P.M.

If it is found on the arrival of the inspector that the stores are not ready at the time named in the official notice, the inspection must be deferred.

Master and officers to give every facility for inspection.

11. The shipowner, master, or officers of a ship shall give the inspector every facility for inspecting the stores and water on board of such ship, and shall, if required, have all the stores contained in casks brought on deck for inspection.

Conditions as to beef.

12. Beef shall consist only of briskets, flanks, and plates of fine heavy grade, freshly cured, free from taint, and thoroughly sweet, packed in good sound casks, re-capped, and re-pickled with pickle of full strength, all to the satisfaction of the inspector.

Conditions as to pork.

13. Pork shall be of assorted pieces in fair proportion, of fine grade, freshly cured, free from taint, and thoroughly sweet, packed in good sound casks, re-capped, and re-pickled with pickle of full strength, all to the satisfaction of the inspector.

Conditions as to preserved meats and vegetables.

14. Preserved meats shall be of fine grade, but may be of any variety, and may be mixed with a fair proportion of vegetables, the whole to be properly preserved and packed in good strong tins, the tins being painted or otherwise protected from rust, all to the satisfaction of the inspector, who may open one or more of the tins of each kind should he deem it necessary.

Vegetables in tins.

15. Vegetables shall be fresh and sound, properly preserved, and in good strong tins, the tins being painted or otherwise protected from rust, all to the satisfaction of the inspector, who may open one or more of the tins of each kind should he deem it necessary.

Flour to be milled from fully matured sound wheat.

16. Flour shall be of fine grade, milled from fully matured good sound wheat, containing a proper proportion of nutritious matter to the satisfaction of the inspector.

If shipped in barrels, the barrels must be new, properly made from suitable

Requirements if shipped in barrels.

seasoned wood, thoroughly tight, and lined with suitable paper. The ends of the barrels to be coated with hot lime. Where tanks are used for the storage of flour on board, they must be thoroughly cleansed, limed with fresh lime, and dried before being re-filled, all to the satisfaction of the inspector.

Biscuits to be made of fully matured wheat flour.

17. Biscuits to be thoroughly baked and dried, and made of fully matured wheat flour, containing a proper proportion of nutritious matter. Where tanks are used for the storage of biscuits on board, they must be thoroughly cleansed, limed with fresh lime, and dried before being re-filled, all to the satisfaction of the inspector.

Stores sent on board.

18. An inspector may at any time proceed on board a ship to ascertain whether the stores or water have been duly inspected, and if he finds any stores or water on board the ship which have not been so inspected, he shall insist on inspecting the same, and if they are of a quality unfit for the use of the crew of such ship, he shall detain the ship under the provisions of the Act until such defects are remedied to his satisfaction.

Water tanks to be cleansed before fresh water supplied.

19. The water left in the ship's tanks from the former voyage must all be completely emptied, and the tanks must be thoroughly cleansed and re-filled with good fresh water.

Stores deficient in quality to be landed.

20. All stores found by the inspector to be deficient in quality shall be landed.

Certificate of inspection.

21. The inspector at the final port of departure in the United Kingdom, if after examination of the stores and water he is satisfied that he has seen all the stores intended for the particular voyage, and that they are of a quality fit for the use of the crew, or in the case of stores previously inspected at some other port, in accordance with Rule 6, if satisfied that the requirements of that rule have been complied with, shall grant a certificate in the prescribed form (P.W. 4), but this certificate shall not be granted except at the final port of departure of the United Kingdom.

No. 10 (see § 529).

GENERAL RULES for Courts of Survey in the United Kingdom, 1876. Recital of the "Merchant Shipping Act," 1876.(*i*)

Short title.

1. These Rules may be cited as "The Rules of the Court of Survey, 1876."

Commencement.

2. These Rules shall come into operation on the 1st day of October, 1876.

Interpretation.

3. In the construction of these Rules, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number.

Courts of survey, their districts and officers.

4. The Courts of Survey, with the districts assigned to each, and the persons authorised to act as Judges and Registrars thereof, and which have been approved by one of her Majesty's Principal Secretaries of State, as set forth in Appendix A, shall be the Courts of Survey, and the Districts, Judges, and Registrars of such Courts, for the purposes of the Merchant Shipping Acts 1854 to 1876.

Publication of rules.

5. These Rules shall be published by her Majesty's Stationery Office through its agents, and a copy shall be kept at the office of the Registrar of every Court of Survey and at every Custom House and Mercantile Marine Office in the United Kingdom, and may be perused thereat by the master or owner of any ship which may be provisionally detained under The Merchant Shipping Act, 1876, and by any one deputed by him.

6. A notice shall be put up in some conspicuous place in every Custom

(*i*) 39 & 40 Vict. c. 80, § 529 *supra*.

House and Mercantile Marine Office in the United Kingdom, containing the name of the Registrar of the Court of Survey for that district, and the name of the street or place in which such Registrar's office is situated.

Publication of the name of registrar and of his office.

7. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to a Court of Survey, he shall file at the office of the Registrar of the Court of Survey for the London district, or for the district in which the ship is, hereinafter called the Court, a notice in the form No. 1 in Appendix B.

Notice of appeal.

8. Immediately upon the filing of the notice of appeal, the Registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether they intend to have the appeal heard by a Wreck Commissioner, and, if so, on what day.

Summoning of court.

9. If the Board of Trade inform him that they do not intend to have the appeal heard by a Wreck Commissioner, the Registrar shall forthwith ascertain which of the other Judges of the Court will hear the appeal, and on what day.

10. On ascertaining when the hearing will take place, the Registrar shall, if there is a list of Assessors for the Court, select therefrom the person who is, in his opinion, the best qualified to act as Assessor on the appeal; or if there is no such list, he will take the instructions of the Judge as to the Assessor to be appointed.

11. The Board of Trade shall appoint the other Assessor, and shall forthwith send the name and address of such Assessor to the Registrar.

12. If the ship is a foreign ship, the Registrar shall give notice to the Consular Officer for the State to which the ship belongs, residing at or nearest to the place where the ship is detained, that, at the request of the appellant, some competent person will be selected by the Consular Officer to act as Assessor.

13. As soon as the Registrar has ascertained by whom the appeal will be heard, he shall summon the Court in the form No. 2 in Appendix B. He shall at the same time send notice thereof to the Board of Trade and to the Appellant, in the form No. 3 in Appendix B.

14. If the survey has been made on the complaint of any person, hereinafter called the complainant, the Board of Trade shall send to him notice of the time and place appointed for the hearing.

15. Previous to the hearing the Board of Trade shall forward to the Registrar, to be produced as evidence at the hearing, an official copy of the report of the surveyor.

16. The Court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal.

17. The Board of Trade and the appellant shall be parties to the proceedings.

Parties.

18. Any other person, on entering an appearance, may, by permission of the Judge, be made a party to the proceedings.

19. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to produce.

20. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the Court is of opinion that the refusal to admit was reasonable; and no

Notice to admit.

costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

Witnesses.

21. The Wreck Commissioner shall have power to issue subpœnas as nearly as may be in the form used in the High Court of Justice, and such subpœnas shall have effect, and may be served in any part of the United Kingdom.

Affidavits.

22. Affidavits may, by permission of the Judge, be used at the hearing when sworn to in any of the following ways; viz.,

In the United Kingdom, before any Judge or Registrar of a Court of Survey, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a Commissioner empowered to take or receive affidavits, or before a Justice of the Peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any Court, Judge, or Justice of the Peace, or any person authorised to administer oaths there in any Court.

In any place out of the British dominions, before a British Minister, Consul, Vice-Consul, or Notary Public, or before a Judge or Magistrate, his signature being authenticated by the official seal of the Court to which such Judge or Magistrate is attached.

Proceedings in court.

23. At the hearing, the Board of Trade shall first call their witnesses, and having done so shall state in writing, what order they require the Court to make.

24. The complainant, if he has appeared, shall then call his witnesses, and having done so shall state in writing, what order he requires the Court to make.

25. The appellant shall then call his witnesses, and having done so shall state in writing, what order he requires the Court to make.

26. After the appellant has examined all his witnesses, the Board of Trade and the complainant may, on cause shown to the satisfaction of the Judge, call further witnesses in reply.

27. After all the witnesses have been examined, the Court shall first hear the appellant, then the complainant (if any), and afterwards the Board of Trade.

28. The Judge may adjourn the Court from time to time and from place to place, as may be most convenient.

29. The Judge may deliver his decision of the Court either *vivâ voce* or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

30. As soon as possible after the Court has come to its decision, the Judge shall issue an order for the release or detention (either finally or on condition) of the vessel in the Form No. 4 in Appendix B.

31. The Judge shall report to the Board of Trade in the Form No. 5 in Appendix B.

Costs and damages.

32. The Court may, if the parties consent thereto in writing, decide, whether costs or costs and damages are due, and to and from whom, and may assess the amount thereof; or the parties may, by consent in writing, refer the question to the Wreck Commissioner.

33. The order for the payment of costs, or of costs and damages, shall be in the Form No. 6 in Appendix B.

Computation of time.

34. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or

Good Friday, or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

35. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in the computation.

36. Any notice, summons, or other document issuing out of the Court may be served by post. Service of notices, &c.

37. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

38. The Fees, a table whereof is in Appendix C., shall be demanded and taken in any proceedings before a Court of Survey. Table of fees.

Appendix A.

Lists of the Courts of Survey, with the Districts assigned to each, and the Persons authorised to act as Judges and Registrars thereof, approved by one of Her Majesty's Principal Secretaries of State.

In the following Lists, Column No. 1 contains the names of all the Courts of Survey in the United Kingdom.

Districts.

The district of the Court of Survey for London shall include the City of London, and the districts of all the Metropolitan County Courts, the districts of the County Court of Kent holden at Gravesend, Dartford, Greenwich, and Woolwich, the districts of the County Court of Essex holden at Brentwood and Romford, and the district of the County Court of Surrey holden at Wandsworth.

The district of any other Court of Survey in England shall be the district of the County Court of the place, at which the Court of Survey is held.

The district of a Court of Survey in Scotland and in Ireland shall be the district of the Port of Customs of the place, at which the Court is held.

The Courts shall be held at the places, whose names they bear, or at any place within their respective districts, and may, by permission of the Judge, be adjourned to any place out of such districts.

Judges.

The Wreck Commissioner shall be a Judge of every Court of Survey in the United Kingdom.

The persons, whose official titles are set out in column No. 2,(*k*) shall be the other Judges of the Courts of Survey at the places opposite to which their names occur.

Registrars.

The Registrar of the Court of Survey for London shall be Mr. William Edward Stanley Thomson, and his office shall be at Somerset House, Strand, in the county of Middlesex.

The Registrar of any other Court of Survey in England shall be the Registrar of the County Court of the place, at which the Court of Survey is held, and his office shall be the office of the Registrar of the said County Court.

(*k*) It is not thought necessary to print column 2. It includes, in the case of England, the County Court judges, and the recorders and stipendiary magistrates (if any); in the case of Scotland, the sheriffs and sheriff substitutes; and in that of Ireland, the resident magistrates, within whose local jurisdiction the courts are held.

The Registrar of a Court of Survey in Scotland shall be the Sheriff Clerk of the county, in which the Court is held, and his office shall be the office of the said Sheriff Clerk.

The Registrar of a Court of Survey in Ireland shall be the Clerk of the Peace, or Registrar or other person discharging the duties of Registrar of the Court of the Chairman of the county, in which the Court is held, and his office shall be the office of the Clerk of the Peace, Registrar, or other person aforesaid.

List No. 1. Courts of survey in England.

Berwick, Belford, Alnwick, Morpeth: North Shields, Newcastle, Gateshead, South Shields, Sunderland, Seaham Harbour: Hartlepool, Stockton: Stokesley, Whitby, Scarborough, Bridlington, Beverley, Hedon, Hull: Goole: Barton-on-Humber, Great Grimsby, Louth, Spilsby, Boston: Spalding, Holbeach, Wisbeach: King's Lynn, Little Walsingham, Holt, North Walsham: Yarmouth, Lowestoft: Halesworth, Framlingham, Woodbridge: Ipswich, Harwich: Colchester, Maldon, Rochford: London: Rochester, Sheerness, Sittingbourne, Faversham: Canterbury, Margate, Ramsgate, Sandwich, Deal, Dover, Folkestone, Hythe, Romney: Rye, Hastings: Lewes, Brighton, Worthing: Arundel, Chichester, Portsmouth: Southampton, Newport, Isle of Wight, Christchurch, Poole, Wareham: Weymouth, Bridport: Axminster, Honiton, Exeter, Newton Abbott: Totnes, Kingsbridge: East Stonehouse, Liskeard: Saint Austell, Truro, Falmouth, Helston, Penzance, Redruth, Bodmin, Camelford, Holsworthy: Bideford, Barnstaple, Williton: Bridgewater, Weston-super-Mare, Wells, Bristol: Thornbury, Dursley: Gloucester, Newnham, Clepstow: Newport (Monmouth), Cardiff, Bridgend, Neath, Swansea: Llanelly, Carmarthen, Narbeth, Pembroke, Haverfordwest, Cardigan, Aberayron: Aberystwith, Machynlleth, Dolgelly, Portmadoc, Pwllheli: Carnarvon, Llangefni, Bangor, Conway, St. Asaph, Holywell, Chester: Runcorn, Birkenhead, Liverpool: Ormskirk: Preston, Kirkham, Paulton-le-Fylde, Lancaster: Ulverston, Whitehaven, Cockermouth, Wigton, Carlisle.

List No. 2. Courts of survey in Scotland.

Leith, Granton, Borrowstoness, Grangemouth, Alloa, Kirkcaldy, Dundee, Arbroath, Montrose, Aberdeen, Peterhead, Banff, Inverness, Wick, Campbeltown, Glasgow, Greenock, Ardrossan, Ayr, Stranraer, Wigtown, Dumfries.

Lists No. 3. Courts of survey in Ireland.

Dublin, Drogheda, Dundalk, Newry, Belfast, Coleraine, Londondery, Sligo, Ballina, Westport, Galway, Limerick, Tralee, Skibbereen, Cork, Youghal, Waterford, New Ross, Wexford.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Judge shall be of opinion that the deviation was material.

No. 1. *Notice of Appeal.*

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the ship *Marian.*

To the Registrar of the Court of Survey for

Take notice that I [*name and address*] the master [*or* managing owner *or* owner of shares] of the ship of the port of do appeal

(1) from the report of *L. M.*, the Surveyor appointed by the Board of Trade to survey the said ship.

or (2) from a declaration given by a shipwright surveyor *or* engineer, (*or* from the refusal of a shipwright surveyor *or* engineer to give a declaration,) under the provisions of section 309 of the Merchant Shipping Act, 1854.

or (3) from the refusal of an emigration officer (*or as the case may be*) to give a certificate of clearance under sections 11 and 50 of the Passengers Act, 1855.

or (4) from the refusal of appointed by the Board of Trade under the provisions of section 30 of the Merchant Shipping Act Amendment Act, 1862, to give a certificate that the said ship is properly provided with lights and with the means of making fog signals.

The address at which all notices and documents may be served by post or otherwise on me is

Dated this day of

(*To be signed by the appellant.*

No. 2. Summons to Court.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for

In the matter of an Appeal by from the report of *L. M.*, the Surveyor appointed by the Board to survey *The Marian* [*or as the case may be*].

In pursuance of the Merchant Shipping Act, 1876, I hereby summon you to attend as Judge [*or* Assessor] on this appeal at on the day of at the hour of in the noon.

Dated this day of 18 .

_____Registrar.

I will attend as summoned.

_____*Signature of person summoned.*

No. 3. Notice of Sitting of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the report of *L.M.*, the surveyor appointed by the Board of Trade to survey *The Marian* [*or as the case may be*].

To *A.B.*, the master [*or* managing owner, *or* owner of shares] of the ship the appellant [*or* the Board of Trade].

Take notice that the Court of Survey will meet at on the day of 18 , at o'clock in the noon to hear the appeal in the above matter.

Dated this day of 18 .

_____Registrar.

No. 4. Order of Court for Release or Detention of Ship.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the Report of *L.M.*, the Surveyor appointed by the Board of Trade to survey *The Marian* [*or as the case may be*].

I do, with the concurrence of , order the said ship to be released *or* detained [finally *or* conditionally upon].

Given under my hand this day of 18 .

_____ Judge.

We [*or* I] concur in the above report.

_____ Assessor.

_____ Assessor.

No. 5. Report of Judge of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the Report of *L.M.*, the Surveyor appointed by the Board of Trade to survey *The Marian* [*or as the case may be*].

I do report that, having heard this appeal, I did, with the concurrence of order the said ship to be released or detained [finally *or* conditionally upon] for the reasons set forth in the annexed statement.

I am also of opinion that the costs of this appeal should be paid by *A.B.* to the Solicitor of the Board of Trade [*or* by the Solicitor to the Board of Trade to *A.B.*; *or* that all parties shall pay their own costs].

Dated this day of 18 .

_____ Judge.

We [*or* I] concur in the above report.

_____ Assessor.

_____ Assessor.

No. 6. Order for Payment of Costs, or of Costs and Damages.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from .

[The parties to this appeal having, by agreement in writing, consented to refer the question whether any costs or costs and damages are due, and to and from whom, to me *or* us, with liberty to assess the amount thereof], I order

(1) That the Board of Trade do pay to the appellant the sum of for the costs *or* the costs and damages] incurred by reason of such detention and survey.

or (2) that the appellant do pay to the Solicitor of the Board of Trade the sum of for the costs incurred by reason of such detention and survey of the said ship.

or (3) that each party pay his own costs.

Given under my hand this day of 18 .

_____ Judge.

We [*or* I] concur in the above order.

Assessor_____

Assessor_____

APPENDIX C.

	£	s.	d.
On filing notice of appeal, for every 50 tons of the gross registered tonnage of the ship	0	10	0
On filing every affidavit	0	2	6
On entering appearance	0	10	0
On every subpœna	0	2	6
On every statement of the order required to be made by the Court	0	10	0
On the production and swearing of every witness	0	2	6
On every consent by the parties to refer the question of costs, or of costs and damages, to the Court or Judge, to be paid by each party	0	10	0
On every hearing, for each day, to be paid by each party, from the amount thereof to be at the discretion of the Judge, from	1	0	0
to	5	0	0
On every order whether for the release or detention of the ship, or for payment of costs, or costs and damages, to be paid by the party taking out the order	1	0	0
On every office copy of the Judge's judgment or report, of the shorthand writer's notes of the evidence, or of any of the proceedings in the appeal, per folio of 72 words	0	0	6

No. 11 (see § 551).

BYE-LAWS AND REGULATIONS RELATING TO PILOTS

OF THE

CORPORATION OF TRINITY HOUSE

OF DEPTFORD STROND.(*l*)

A.—BYE-LAWS, RULES, ORDERS, REGULATIONS, & ORDINANCES,

Made and framed by the CORPORATION OF TRINITY HOUSE OF DEPTFORD STROND, *as well for insuring the good conduct and constant attendance of pilots licensed by the said Corporation upon their duty, as for enforcing the general purposes of an Act passed in the sixth year of the reign of King George the Fourth, intituled, "An Act for the Amendment of the Law respecting Pilots and Pilotage, and also for the better Preservation of Floating Lights, Buoys, and Beacons;" the same bye-laws, rules, orders, regulations and ordinances having been examined, sanctioned and approved in that behalf by the Right Honourable Sir Charles Abbott, Knight, Lord Chief Justice of His Majesty's Court of King's Bench, pursuant to the directions of the said Act.*

Imprimis: It is ordained, that from and after the promulgation of these present bye-laws, rules, orders, regulations, and ordinances, all and every the bye-laws, rules, orders, regulations, and ordinances, heretofore made or framed by the said corporation, for the government of the said pilots, or for ensuring the good conduct and constant attendance of the same upon their

(*l*) The Trinity House, in compliance with the request of Messrs. Stevens & Haynes, most kindly furnished copies of the following bye-laws, rules, regulations, &c., as those which are now in force in their districts.

duty, or for enforcing the general purposes of an Act passed in the forty-eighth year of the late King's reign, intituled, "An Act for the better regulation of Pilots and of the Pilotage of Ships and Vessels navigating the British Seas," shall be and the same are from henceforth annulled, and in lieu and stead thereof the said corporation do hereby make and frame the bye-laws, rules, orders, regulations and ordinances following; that is to say:

II. It is ordained, that every pilot who shall be ordered to proceed on his Majesty's service by any order signed by the deputy master or secretary of the said corporation, or by the officer for the time being of the said corporation at Yarmouth, or elsewhere, duly authorised to act in matters of pilotage, or who shall be so ordered, in writing or otherwise, by any officer in his Majesty's service, shall immediately proceed thereon, and every pilot who shall fail so to do, or who shall evade the receipt of any such order, or who shall quit or decline such service, shall, for the first offence, forfeit £5, and for the second and every subsequent offence £10 each.

III. It is ordained, that every pilot engaged in the charge of any ship employed by government in the transport service, shall observe particularly if any unnecessary delay takes place on the part of the master in proceeding towards his destination, and if any delay does take place, such pilot shall on his return report the same to the secretary of the said corporation, and, upon going on board, such pilot shall give notice to the master that he has orders so to do.

IV. It is ordained, that no pilot having the charge of a merchant ship, shall stop the same alongside the moorings of his Majesty's ships at Deptford, or elsewhere, or between the Round Tree and Bathing House at Gravesend (except in either of such cases there be an extreme necessity for so doing, or leave be obtained for that purpose from the proper officer or officers in that behalf), and all pilots licensed by the said corporation, are at all times to be particularly careful to steer clear of the King's ships in passing them.

V. It is ordained, that every pilot when called upon or required to pilot any ship or vessel, shall, if under engagement to any other ship, forthwith make known such engagement, and specify the particulars thereof truly and faithfully to the person calling for or requiring such pilot's service, and in case of any concealment, misrepresentation, or falsehood in respect of such alleged previous engagement, the pilot offending shall forfeit £10.

VI. It is ordained, that every pilot who shall have taken charge of any ship from the river Thames to the Downs, or elsewhere, shall, without any additional compensation in that behalf, wait on board for the space of three complete days, while such ship may be detained at Gravesend or elsewhere, for want of seamen, or by any other casualty, nor shall he at the end of three complete days be at liberty to quit such ship, or receive any additional compensation if she shall be further detained by winds, weather, or tides, and should the ship be detained beyond three complete days on any other account except winds, weather, or tides, the pilot having the charge thereof shall nevertheless still (if required so to do) remain in the charge of her, provided a compensation of 6*s*. per day be offered to him in that behalf by the master or owner.

VII. It is ordained, that every pilot shall in all cases demean himself civilly and respectfully towards all persons who may require his service, and towards all officers in his Majesty's navy, and shall maintain a strict temperance and sobriety in the exercise of his office, and shall use his utmost care and diligence for the safe conduct of every ship which he shall be entrusted with the charge of, and to prevent her doing damage to others.

VIII. It is ordained, that every pilot who shall undertake the charge of

any ship downwards, shall, before his departure, leave, or cause to be left, notice thereof in writing at the proper office at the Trinity House in London, with one of the clerks there attending, and shall be considered as disengaged until he shall have so done, and upon such pilot's return he shall immediately, in his own person, attend at the said office, and make and sign such entry in a book there kept for that purpose, as the said corporation shall from time to time direct or require.

IX. It is ordained, that every pilot licensed by the said corporation, shall from time to time, and at all times in obedience to the order or summons of the said corporation, under the hand of the secretary thereof for the time being, duly delivered or offered to such pilot, or left a reasonable time at the usual or last known place of residence of such pilot, attend the said corporation, at their courts, bye-boards, or committees, or their secretary for the time being, at the Trinity House in London, and that every pilot licensed by the said corporation upon a certificate of qualification from sub-commissioners of pilotage, shall in like manner attend the sub-commissioners of the port or place for which such pilot shall be so licensed, in obedience to the order or summons of the said sub-commissioners, under their hands, or the hands of the major part of them, duly delivered, offered or left as aforesaid, to answer to any charges brought against such pilots respectively, or for the performance of any public service, or for any other purpose whatsoever, and in default of such attendance every pilot so offending shall forfeit, for the first offence, 40*s.*, and for the second and every subsequent offence £5 each.

X. It is ordered and hereby directed that every pilot licensed or to be licensed by the said corporation, upon their receiving a certificate of examination by any sub-commissioners of pilotage, shall for such examination, and for the granting of the licence thereon, pay the sum of two guineas to the said sub-commissioners of pilotage by whom he shall be so examined, or to one of them, and shall also for the renewing or confirming of such licence, from time to time pay to the sub-commissioners of pilotage for the time being at or for the port or place specified in such licence, or to one of them, the annual sums following (that is to say), every pilot so licensed, or to be licensed as aforesaid, for the ports of Plymouth, Portsmouth, or Cowes respectively, the annual sum of two guineas. And every pilot licensed or to be licensed as aforesaid, for any other port or place, the annual sum of one guinea, unless the pilots at or for such port or place, shall be divided into two classes, and in that case the pilots of the first class are to pay the annual sum of two guineas each, and pilots not of the first class the annual sum of one guinea each.

XI. It is ordained, that no pilot shall add to or in any way alter his licence, or make or alter any endorsement thereon, nor shall he be privy to any such licence or endorsement being altered.

XII. It is ordained, that every pilot who shall observe any alteration in any of the sands or channels, or that any of the buoys or beacons of the said corporation are driven away, broken down, or out of place, shall forthwith deliver or send a correct statement thereof in writing to the secretary of the said corporation for the time being.

XIII. It is ordained, that every pilot shall, whenever he comes to an anchor, carefully observe the settings of the tide and the force of the stream, and if it shall happen that he comes near to a sand, or other object or cause of danger, and there be any other ships or ship in company likely to fall in therewith, such pilot shall immediately give notice thereof to the captain or principal officer of the ship under his care, that he may make a signal to such other ships or ship for avoiding the same.

XIV. It is ordained, that no pilot shall on any pretence aid or assist either in his own person, or with his boat or servants, or by any other means whatever, the landing, removing, or secreting any seaman from any merchant ship or vessel, to avoid serving in his Majesty's navy, or to escape the impress for the same.

XV. It is ordained, that every pilot shall from time to time conform himself strictly to all directions which shall be given to him by any of the harbour masters authorised by Act of Parliament under the corporation of the City of London, touching the mooring, unmooring, placing, or removing of any ship or vessel under his charge, as long as such ship or vessel shall be lying and situate within the limits of the authority of such harbour master.

XVI. It is ordained, that each and every pilot belonging to a licensed pilot vessel shall be at liberty to entertain one apprentice and no more.

XVII. It is ordained, that for any work done on the river Thames or Medway, by men in boats, being less than the work for the whole tide, the pay shall be for half a tide's work, 4*s*. to each man, and so on in proportion for any time less than a whole tide, the pay for which is settled by the said Act of the sixth year of the reign of his present Majesty at 8*s*.

XVIII. It is ordained, that in all cases where pecuniary penalties and forfeitures are annexed to the breach of the foregoing bye-laws, rules, orders, regulations, and ordinances, the said Corporation of Trinity House may mitigate and reduce the same to one-fourth part at their discretion.

XIX. It is ordained, that every pilot who shall offend against any or either of the foregoing bye-laws, rules, orders, regulations, and ordinances, shall, for every such offence (whether the same shall subject him to any pecuniary penalty or not, and in addition to such penalty, if any) be liable to have his licence annulled and forfeited, or suspended, at the discretion of the said corporation.

N.B. Besides conforming themselves diligently to the above bye-laws, rules, orders, regulations, and ordinances, the pilots licensed by the Corporation of Trinity House, are of course in all things to observe and obey the enactments and provisions relating to such pilots contained in the said Act of Parliament, made and passed in the sixth year of the reign of His Majesty King George the Fourth, a copy of which Act has been delivered to each of the said pilots.

By Order of the Corporation,

(Seal.)

J. HERBERT, *Secretary*.

I have perused and examined the foregoing bye-laws, rules, orders, regulations, and ordinances, and do hereby sanction, approve of, and confirm the same. Witness my hand and seal the nineteenth day of April, one thousand eight hundred and twenty-six.

C. ABBOTT. (Seal.)

REGULATIONS TO BE OBSERVED BY THE PILOTS IN THE PAYMENT OF THE POUNDAGE ON THEIR RESPECTIVE EARNINGS, ESTABLISHED BY THE 385TH SECTION OF THE ACT, 17 AND 18 VICT., CAP. 104.

Each pilot is required, at the expiration of every month, to deliver to the clerk in the pilot's office at the Trinity House, or to the sub-commissioners for his district, as the case may be, a correct account, on one of the forms

provided him for that purpose, of all vessels piloted by him in the said month, and he is then to pay the amount due for poundage thereon, to be applied to the purposes of the pilot's fund as provided by the Act.

In order to ensure a correct return of their earnings, the pilots are required to render, at the end of each year, an abstract account, on one of the forms also provided for that purpose, of their total earnings in each month, and to declare solemnly before a magistrate to the truth of the returns they have so made.

By Order,

ROBIN ALLEN, *Secretary.*

Order for the Additional Marking of Pilot Vessels.

TRINITY HOUSE, LONDON.

"In addition to the manner in which pilot vessels are required to be distinguished by the 346th section of the Act 17 & 18 Vict., c. 104, It is ORDERED by the Corporation of Trinity House, that all pilot vessels licensed by them, shall have the number of such vessel, and the initial letter of the port to which she belongs, painted black on the mainsail and trysail thereof: —That the figure or figures of such number and the initial letter of the port shall be six feet in length, and of proportionate breadth: and that the said number shall be placed immediately above the centre of the line from the throat to the leech of the mainsail—and the initial letter immediately beneath the said number. Also, that the license of every pilot vessel shall be immediately withdrawn on board of which, while actually holding a licence as such, any main or trysail shall be found not marked in the manner hereinbefore directed."

By Order,

ROBIN ALLEN, *Secretary.*

Order respecting the Use of the Lead.

TRINITY HOUSE, LONDON.

It having been represented to this corporation, that the pilots frequently neglect the use of the lead, which is of the greatest importance to the safety of vessels in their charge, especially in thick weather:—THE PILOTS are hereby cautioned against any repetition of such neglect, as in the event of any accident occurring, and proof being produced that the pilot has failed to perform this most essential branch of his duty, his licence will be taken away and declared null and void

By Order,

ROBIN ALLEN, *Secretary.*

Order respecting Vessels Touching the Ground, or in Collision.

TRINITY HOUSE, LONDON.

When a vessel touches the ground, or a collision occurs with any other vessel, the pilot in charge is immediately to report the occurrence in writing on the form prescribed, addressed to the secretary at this house.

By Order,

ROBIN ALLEN, *Secretary.*

Orders respecting Loss of Anchors and Cables.

TRINITY HOUSE, LONDON.

When anchors or cables are lost from any vessel, the pilot in charge is immediately to report the occurrence in writing on the form prescribed, addressed to the secretary, at this house.

By Order,

ROBIN ALLEN, *Secretary.*

B.—RULES AND REGULATIONS TO BE OBSERVED BY THE RIVER PILOTS, LICENSED BY THE CORPORATION OF TRINITY HOUSE, IN CONDUCTING THE SERVICE AT GRAVESEND, UNDER THE SYSTEM OF ROTATION, ESTABLISHED 1816.

BY THE MASTER, WARDENS, AND ASSISTANTS OF THE CORPORATION OF TRINITY HOUSE OF DEPTFORD STROND.

The Corporation having, in April, 1816, appointed a ruler of the pilot establishment at Gravesend, whose duty it is to supervise and regulate the conduct of the river pilots,—to carry into effect the principle of rotationary employment—to hear and determine such differences as may arise between the pilots—to prevent complaints from the masters of vessels on the ground of their not being regularly supplied with pilots on their arrival at Gravesend, and also to prevent the employment of unlicensed persons to the prejudice of the pilots; and the Corporation having revised and considered the several rules and regulations which have from time to time been made in this respect, and consolidated the same into one code, as follows, have directed Mr. Samuel Dixon, the present ruler, to take especial care that the said rules and regulations are duly observed by all the pilots under his supervision, and to report any transgression, neglect or inattention thereof which he may deem to require the notice and judgment of the Board. And all the river pilots are hereby directed and required strictly to observe and to pay exact obedience to such rules and regulations, and to represent to the ruler, in writing accompanied by proper vouchers of the facts, any infringements upon their turns and tour of duty under the same, of which they may have to complain, in order that if needful the particulars thereof may be transmitted to this house for the board's consideration.

RULES AND REGULATIONS.

I. All river pilots attending at Gravesend for the purpose of taking charge of ships upward, whether by choice or in rotation, shall, on their arrival, give in their names at the ruler's office; and every pilot shall, immediately on his return from taking up a vessel, report the same to the ruler in the form provided for that purpose.

II. The twenty pilots first in rotation according to their respective numbers shall not absent themselves without giving notice to the ruler.

III. The hours of attendance for the pilots on turn shall be at sunrise and sunset, from the first day of November to the first day of March; and at six o'clock in the morning and six o'clock in the evening, during the remaining eight months.

IV. The first ten pilots in turn shall, on the evening preceding their going down in the pilot-vessel, attend at the ruler's office; and shall proceed in the vessel down the river on the following morning; and the ten pilots next in turn, shall attend on the following morning and board any vessel in their turn which may not have received a pilot from the pilot-vessel, or shall be in

readiness to embark in the pilot vessel, in the event of a further supply of pilots being required.

V. The hour for the pilot-vessel to move down the river shall be as early as wind, tide, and daylight will admit; particularly in an easterly wind, that the trade may not be delayed for want of pilots in due time.

VI. The pilot-vessel shall, half an hour before she proceeds down the river, hoist a blue peter, when those pilots first in rotation are to assemble on board; and when all are on board, the blue peter is to be hauled down, and the pilot flag hoisted; if the whole ten are not on board when the pilot-vessel is about to move, the blue peter is to be half mast, when the vacancies shall be filled up by the pilots next in turn.

VII. The pilot-vessel's station below shall not be farther down than Holy Haven; and her station above shall not be higher up than Tilbury Fort.

VIII. The station of the pilot-vessel when the weather shall not permit her going down the river, shall be either off Coal House Point or Cliff Creek, as may be best adapted for boarding ships coming up.

IX. The pilot-vessel, when returning for more pilots, shall hoist the blue peter, and thus give notice to the pilots attending to join her.

X. The pilot-vessel shall return in the evening to her station, when there are no more vessels in sight in want of pilots; and shall be there in the morning ready to proceed down the river.

XI. In the event of the twenty pilots being shipped, a selection of ten, or as many more as may be necessary, shall be made by the ruler in time for vessels that may yet arrive.

XII. If by any artifice, collusion, or manœuvre, a pilot boards a ship to the prejudice of another, the pilotage shall, upon proof thereof, be either wholly surrendered to the injured party, or divided, as circumstances may warrant.

XIII. No pilot, who shall have taken up a vessel upon a choice-letter, shall be entitled to a turn from the pilot-vessel until every other pilot shall have had either a turn or a choice-vessel; and any pilot who shall not be ready on the arrival of his turn, or who shall evade or refuse to take charge of the vessel falling to him, shall forfeit such turn of employment.

XIV. No pilot shall go afloat below the town of Gravesend to take charge of a vessel during the day unless he has a choice-letter for such vessel duly authenticated by the ruler.

XV. The pilots in turn shall be in attendance at the station, and go off to any vessels that may have anchored in the Reach, at or below Gravesend, in the night; but if any vessel has passed Tilbury Fort without a pilot, any pilot that is in the way may take charge of such vessel to prevent her detention, nor shall he be superseded by any turnman.

XVI. Any pilot taking charge of a vessel in his turn, of eight feet draught of water or under, shall be entitled to another vessel on the same turn; and such second vessel shall be the tenth which may arrive after he shall have reported himself to the ruler, and his position on the list shall have been arranged by him.

XVII. None but the pilots in rotation, or having choice-letters, shall presume to go on board the pilot-vessel when proceeding down, or follow her in their own or any other boats.

XVIII. No pilot shall go on board a vessel subject to the quarantine laws, in the night, with a view of remaining therein and keeping the charge of her from the pilot in turn.

XIX. Pilots not in turn boarding a vessel below the Terrace Pier, Gravesend, shall not be allowed to retain the charge if any turnmen offer, on the

vessel's arriving off that place, where the turnmen are to assemble and go off in rotation as vessels arrive; but if they persist in keeping charge, they shall refund the pilotage to the turnman offering.

XX. If a pilot from the vessel, or any turnman, take charge of a ship from below to Gravesend, and a pilot with a choice-letter supersede him, the pilot so superseded shall stand first on the list for the succeeding day.

XXI. No pilot shall be uncivil to or insult the master of the pilot-vessel, or constrain or persuade him to any act or proceeding contrary to his duty and the regulations of the service.

XXII. The system of rotation shall apply to every ship in the Royal navy wanting a pilot; but if all the pilots be afloat, the ruler shall, in his discretion, send the pilot he thinks most competent, if unemployed, and such pilot shall not lose his rotation upon his return from that duty.

XXIII. Such pilot or pilots in turn, who are not shipped from the station at Gravesend, or who have returned in the pilot-vessel, shall attend at the ruler's office every evening, at any hour, of which notice shall be given, to arrange the rotation list for the following day.

XXIV. The ruler shall receive all complaints, and such as he may not be able to adjust shall be forwarded by him to the Corporation for hearing and determination.

XXV.—Every pilot who shall offend against any or either of the foregoing regulations will be liable to have his licence revoked and annulled, or suspended, at the discretion of the Corporation.

The aforegoing rules and regulations are to take effect on the 1st January, 1853.

By command of the Corporation,

J. HERBERT, *Secretary.*

Trinity House, London,
2nd November, 1852.

C.—*Order in Council of the* 1*st May*, 1855.

At the Court at Buckingham Palace, the 1st day of May, 1855.

REGULATIONS.

First. All persons applying for licences as pilots in the London district (except freemen of the said Watermen's Company applying to be licensed for home trade steam passenger ships) shall produce such certificates as shall be deemed satisfactory by the Trinity House, previously to examination, as in the said Act provided, on the following points—viz.:

1st. Their qualification by previous service, under the rule hereinafter provided.

2nd. Their previous good conduct and habits of sobriety.

3rd. Their age; and

4th. That they are in good health, and not afflicted with any bodily complaint or infirmity rendering them unfit properly to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorised medical practitioner.

Second. No person shall be licensed as a pilot for the London district (except freemen of the said Watermen's Company) who shall have passed the age of 35 years, nor in the Trinity House outport districts who shall have passed the like age, except under such especial circumstances as shall appear to the Trinity House to afford sufficient grounds for his appointment after that age.

Third. No person shall be licensed as a pilot for the London district (except freemen of the said Watermen's Company) who shall not have served as mate for three years on board of, or shall not have been for one year in actual command of, a square-rigged vessel of not less than 80 tons register tonnage for the North Channel upwards; and not less than 150 tons register tonnage for the North Channel downwards, or for any of the South Channels, or who shall not have been employed in the pilotage or buoyage service of the said Trinity House for seven years, and have served, in addition thereto, for two years in a square-rigged vessel, or who shall not have served an apprenticeship of five years to some licensed pilot vessel, and shall also have served for two years in a square-rigged vessel.

Fourth. No person licensed as a pilot for the London district (except freemen of the said Watermen's Company, to be licensed as hereinafter provided), shall take charge as such of any ship drawing more than 14 feet water, in the river Thames or Medway, or any of the channels leading thereto or therefrom, until such person shall have acted as a licensed pilot for three years, and shall have been after such three years, on re-examination, approved of in that behalf by the said Trinity House, on pain of forfeiting ten pounds (£10) for every such offence, unless there shall be no qualified pilot to be obtained, who has passed the said examination for ships drawing more than 14 feet water.

Fifth. Every pilot who by the 385th section of the said "Merchant Shipping Act, 1854," is required to pay a sum of three pounds three shillings (£3 3*s.*) to the Pilot's Fund, on the 1st of January in every year, shall, on receiving a licence, pay a like sum of three pounds three shillings (£3 3*s.*), and for every extension of such licence a further sum of one pound one shilling (£1 1*s.*) to the said Fund.

Sixth. Every pilot who shall of his own accord relinquish his employment as such, or who shall be dismissed from the service, shall not be entitled to a return of any sum or sums paid by him to the said Pilot's Fund, and shall forfeit all claim to any allowance therefrom.

Seventh. Any person, being a freeman of the said Waterman's Company, who shall be able to prove to the satisfaction of the Trinity House that he has piloted steam passenger ships on the river Thames, between London Bridge and Gravesend, for a period of two years, or who shall have obtained his freedom of the said Company by servitude as apprentice to any such freeman employed in so piloting such steam passenger ships, shall be deemed qualified, after examination as in the said Act provided, to be licensed as a pilot for the navigation up and down the river Thames, between London Bridge and Gravesend, subject to the following terms and conditions—viz.:

1st. That such licence shall authorise him to act as pilot only on board steam passenger ships, being "home trade ships," and no others; all pilots so licensed being intended to be designated "Watermen Pilots for Home Trade Steam Passenger Ships."

2nd. That such licence shall not authorise him to supersede, in the charge of any steam passenger ship, any other pilot duly licensed by the Trinity House for the said navigation between London Bridge and Gravesend.

3rd. That he shall be subject to all bye-laws, rules, orders, and regulations made or hereafter to be made by the Trinity House for the government of pilots generally, and to all penalties thereby imposed and provided, unless specially exempted therefrom.

4th. That he shall pay the like sums of money as are payable by pilots licensed for the London district, on their appointment, and on the

annual renewal of their licences; but shall not be required to pay to the Pilot's Fund the poundage of sixpence in the pound upon the pilotage earnings of pilots licensed by the Trinity House, as provided by the 385th section of the said Act; nor shall he, or his widow, or children be entitled to any benefit from the said Pilot's Fund.

D.—*Order in Council of the* 16*th of July*, 1857.

At the Court at Buckingham Palace, the 16th day of July, 1857.

Any master or mate who holds a pilotage certificate granted by the said Trinity House under the said Act, enabling him to pilot any ship or ships, shall be qualified to pilot any other ship or ships belonging to the same owner or owners as the ship or ships for which his certificate was granted, within the limits described in such certificate, without being compelled to employ a pilot, on the following conditions, viz.:

The ship or ships which he is so qualified to pilot shall be of no greater draught of water than the ship or ships in respect of which his certificate was granted.

The name and description of every ship which he is so qualified to pilot shall have been, by or with the consent of the said Trinity House, first added to, or endorsed upon, his certificate.

E.—RULES AND REGULATIONS TO BE OBSERVED BY THE CHANNEL PILOTS, LICENSED BY THE CORPORATION OF TRINITY HOUSE, IN CONDUCTING THE SERVICE AT GRAVESEND.

BY THE MASTER, WARDENS, AND ASSISTANTS OF THE CORPORATION OF TRINITY HOUSE OF DEPTFORD STROND.

The Corporation having been pleased to order that the ruler of the pilot establishment at Gravesend shall supervise the Channel pilots, licensed after the 1st day of October, 1853, and shall carry into effect a principle of rotationary employment by such pilots, and hear and determine such differences as may arise between the said Channel pilots, with a view of preventing complaints from the masters of vessels of their not being regularly supplied with pilots on their arrival at Gravesend, and also of preventing the employment of unlicensed persons to the prejudice of the pilots. The ruler for the time being is hereby required to take especial care that the following rules and regulations are duly observed by all the Channel pilots under his supervision, and to report any transgression or neglect thereof which he may deem to require the notice and judgment of the Board. And all the said pilots are hereby ordered and required strictly to observe and to pay exact obedience to the said rules and regulations, and to represent to the ruler in writing, accompanied by proper vouchers of the facts, any infringements thereof, or upon their turns, and the tour of duty prescribed thereby, of which they may have to complain, in order that if needful the particulars thereof may be transmitted by him for the consideration of the Board.

RULES AND REGULATIONS.

I. All Channel pilots licensed after the 1st day of October, 1853, attending at Gravesend for the purpose of taking charge of ships downward, whether by choice or in rotation, shall on their arrival give in their names at the ruler's

office; and every pilot shall, immediately on his return from piloting a vessel, report the same to the ruler in the form provided for that purpose.

II. The first, second, and third pilots in rotation for each Channel shall be in attendance for day duty, and the eleventh, twelfth, and thirteenth pilots in rotation for each Channel shall be in attendance for night duty, and shall not absent themselves without giving notice to, and obtaining the sanction of, the ruler.

Should there, however, be a sufficient number of volunteers for night duty, the ruler is authorised to exempt from such duty either or all the pilots on turn.

III. The hours of attendance for the pilots on turn for day duty shall be from 6 A.M. until 6 P.M., and for night duty from 6 P.M. until 6 A.M.

IV. The pilots in turn for each Channel shall, on each evening, attend at the ruler's office, and the three pilots next in turn for each Channel shall be in attendance to receive the instructions of the ruler in the event of a further supply of pilots being required, in order that vessels may not be delayed for want of pilots.

V. The pilot boat, when returning for more pilots, shall hoist a blue flag when South Channel pilots, and a red flag when North Channel pilots are required, thus intimating the class of pilots required to join her.

VI. The cruising ground for the pilot boat shall not be higher up than Northfleet Hope.

VII. The pilot boat shall return in the evening to her station, when there are no more vessels in sight in want of pilots, and shall be there in the morning ready to proceed up the river, if required.

VIII. In the event of the six pilots for either channel being shipped, a selection of as many as may be necessary, shall be made by the ruler, in rotation, if possible, in time for vessels that may be coming down.

IX. If by any artifice, collusion, or manœuvre, a pilot board a ship to the prejudice of another, the pilotage shall, upon proof thereof, be either wholly surrendered to the injured party, or divided, as circumstances may warrant.

X. Pilots licensed for both Channels shall take their respective turn for each Channel.

XI. A pilot who shall have taken a vessel by selection of the owner, agent, or master, shall, on his return, be placed at the bottom of the list for the Channel down which he shall have piloted such vessel, and any pilot who shall not be ready on the arrival of his turn, or who shall evade, refuse, or neglect to take charge of the vessel falling to him, shall forfeit such turn of employment.

XII. Any pilot shipped in his turn, who shall be detained in piloting a vessel, and thereby prevented from taking his place on the rotationary list for employment, shall, on his return, take the first turn for duty, provided he satisfactorily account to the ruler for such delay.

XIII. Any pilot selected by the owner, agent, or master of a vessel shall obtain a letter signifying such selection on a form on which his name has been placed and initialed by the clerk of the Pilotage Department, shall then apply at the Trinity House for the official stamp to be placed thereon, and pay a fee of 10*s*. (which fee will be returned if the said letter is acted on or proof produced that special circumstances have arisen which have prevented his doing so.)

No pilot having obtained a choice letter shall act thereon until he shall have handed the same to the ruler and have been declared off turn.

XIV. No pilot shall go afloat above the pilot boat to any vessel, unless he has been selected for such vessel.

XV. If any vessel has passed the Pillar, at the entrance of the Canal at Gravesend, marking the boundary of the Port of London, without a pilot, any pilot that is in the way may take charge of such vessel to prevent her detention, nor shall he be superseded by any turnman.

XVI. Pilots not on turn, boarding a vessel above the Pillar at the entrance of the Canal at Gravesend, marking the boundary of the Port of London, shall not be allowed to retain the charge thereof, if any turnman offers, except when such pilot boarded the vessel in consequence of no pilot having a priority of claim for a turn to himself, being at the station.

XVII. Any pilot who may, from sickness, or being called as a witness, or from having to attend a court of justice on matters relating to pilotage, have lost his turn of employment, shall, upon proof thereof, be entitled to the first turn for duty.

XVIII. The coxswain of the boat shall keep a log book, and enter therein the name of every pilot shipped, together with the time of his shipment, the said book to be produced to the ruler when required by him, and be open for inspection by the said pilots at all reasonable hours.

XIX. Every pilot who shall offend against any of the foregoing regulations, will be liable to have his licence revoked and annulled, or suspended, at the discretion of the corporation.

The aforegoing rules and regulations are to take effect on the 8th day of April, 1867.

By command of the Corporation,

P. H. BERTHON,
Secretary.

F.—*Order in Council of the 5th of February*, 1873.

At the Court at Osborne House, Isle of Wight, the 5th day of February, 1873.

I. All persons applying for licences as pilots for such exempted(*m*) ships on the river Thames between London Bridge and Gravesend(*n*) shall produce such certificates as shall be deemed satisfactory by the Trinity House previously to examination, as in the said Act provided, on the following points, viz.;

(1) Their qualification by previous service under the rule hereinafter provided;

(2) Their previous good conduct and habits of sobriety;

(3) That they are in good health, and not afflicted with any bodily complaint or infirmity, rendering them unfit to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorised medical practitioner.

II. Any person who shall be able to prove to the satisfaction of the Trinity House that he has piloted ships on the River Thames, between London Bridge and Gravesend, for a period of two years previously to the date of this bye-law, or that he is otherwise eligible by practical experience in the navigation of vessels within that district, shall be deemed qualified, after examination, as in the said Act provided, to be licensed as a pilot for the navigation up and down the River Thames between London Bridge and Gravesend, subject to the following terms and conditions, viz.:

(1) That such licence shall authorise him to act as pilot only on board such

(*m*) *I.e.*, exempted from compulsory pilotage.

(*n*) A similar O. in C. applying *mutatis mutandis* to pilotage between the Nore and Rochester was made on September 6, 1880.

exempted ships, and no others; all pilots so licensed being intended to be designated "pilots for exempted ships";

(2) That such licence shall not authorise him to supersede, in the charge of any ship, any other pilot duly licensed by the Trinity House for the said navigation between London Bridge and Gravesend;

(3) That he shall be subject to all bye-laws, rules, orders, and regulations made or hereafter to be made by the Trinity House, for the government of pilots generally, and to all penalties thereby imposed and provided, unless specially exempted therefrom;

(4) That he shall pay the like sums of money as are payable by pilots licensed for the London district on their appointment, and on the annual renewal of their licences, but shall not be required to pay to the Pilot's Fund the poundage of sixpence in the pound upon the pilotage earnings of pilots licensed by the Trinity House, as provided by the 385th section of the said Act, nor shall he or his widow or children, be entitled to any benefit from the said Pilot's Fund.

G.—*Order in Council of the 20th November*, 1873.

At the Court of Balmoral, the 20th day of November, 1873.

REGULATIONS.

I. All persons applying to the Trinity House for licenses as pilots for any part of the sea or channels beyond the limits of any pilotage authority, shall produce such certificates as shall be deemed satisfactory by the Trinity House previously to examination on the following points, viz.:

(a) Their qualification by previous service;

(b) Their previous good conduct and habits of sobriety;

(c) That they are in good health, and not afflicted with any bodily complaint or infirmity, rendering them unfit properly to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorised medical practitioner.

II. Any person being able to prove to the satisfaction of the Trinity House that he has obtained a practical knowledge of seamanship by service at sea for a period of not less than five years, shall, subject to such examination as the Trinity House shall think fit, be deemed eligible to be specially licensed to act as a pilot for any part of the sea or channels beyond the limits of any pilotage authority, subject to the following terms and conditions:

(a) That the special licence to be granted to any such person shall only authorise him to act as pilot on board ships outside the limits of any pilotage district, and not within the limits of any such district;

(b) That he shall be subject to all rules and regulations made or hereafter to be made by the Trinity House for the government of pilots generally;

(c) That he shall pay the sum of two guineas on receiving his licence, and one guinea on the annual renewal of his licence; but he shall not be required to pay poundage, or otherwise to contribute to the Pilot's Fund, as provided by the 385th section of "The Merchant Shipping Act, 1854;" nor shall he or his widow or children be entitled to any benefit from the said Pilot's Fund.

TABLE OF THE

To be DEMANDED and RECEIVED by PILOTS licensed by the Corporation of Trinity House of cap. 125, 16 & 17 Victoriæ, cap. 129, and 17 & 18 Victoriæ, cap. 104, for Piloting

FROM	TO	7 Feet & under.	8 Feet.	9 Feet.	10 Feet.	11 Feet.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Isle of Wight and *vice versa*	The Downs	3 4 0	3 12 0	4 0 0	4 8 0	4 16 0
Off Dungeness to off Folkestone, the Church bearing N.N.W. by compass, and *vice versa*	Ditto	0 18 0	1 0 0	1 2 0	1 4 0	1 6 0
Off Folkestone to the South Foreland—the Lights in one and *vice versa*	Ditto	0 10 0	0 12 0	0 14 0	0 16 0	0 18 0
The Downs and *vice versa*	Margate Roads or Tongue Light Vessel	1 9 0	1 13 0	1 17 0	2 1 0	2 5 0
Margate Roads or Tongue Light Vessel and *vice versa*	Gravesend	3 11 0	4 0 0	4 10 0	4 19 0	5 8 0
The Sea, the Downs, Orfordness, or Hoseley Bay and *vice versa*	The Nore or Warps	2 18 0	3 6 0	3 14 0	4 2 0	4 10 0
	Sheerness, Stangate Creek, or Blackstakes	3 6 0	3 16 0	4 6 0	4 16 0	5 6 0
	Thames Haven	3 4 0	3 14 0	4 5 0	4 16 0	5 6 0
	Gravesend or Chatham	3 14 0	4 6 0	4 18 0	5 10 0	6 2 0
The Nore, or Warps, and *vice versa*	Sheerness, Stangate Creek, or Blackstakes	0 16 0	0 18 0	1 0 0	1 2 0	1 4 0
	Chatham or Rochester	1 18 0	2 3 0	2 7 0	2 12 0	2 16 0
	Gravesend	1 12 0	1 16 0	2 0 0	2 4 0	2 8 0
Sheerness, Stangate Creek or Blackstakes and *vice versa*	Chatham or Rochester	1 12 0	1 14 0	1 16 0	1 18 0	2 4 0
	Gravesend	2 6 0	2 10 0	2 14 0	2 18 0	3 2 0
Rochester or Chatham and *vice versa*	Gravesend	2 12 0	2 16 0	3 0 0	3 4 0	3 8 0
Thames Haven (Inwards only)	Ditto	0 16 0	0 18 0	1 0 0	1 2 0	1 4 0
Gravesend Reach and *vice versa*	Northfleet	0 4 0	0 6 0	0 8 0	0 10 0	0 12 0
	Greenhithe or Long Reach	0 8 0	0 12 0	0 16 0	1 0 0	1 4 0
	Erith	0 14 0	0 18 0	1 2 0	1 6 0	1 10 0
	Barking and below Victoria and Albert Dock	0 16 0	1 2 0	1 8 0	1 14 0	2 0 0
	Victoria and Albert Dock to Greenwich Pier	0 18 0	1 4 0	1 10 0	1 16 0	2 2 0
	Moorings, London Docks, City Canal, or St. Katharine's Docks	1 2 0	1 8 0	1 14 0	2 0 0	2 6 0
Greenhithe, or Long Reach, and *vice versa*	Barking and below Victoria and Albert Dock	0 12 0	0 16 0	1 0 0	1 4 0	1 8 0
	Victoria and Albert Dock to Greenwich Pier	0 14 0	0 18 0	1 2 0	1 6 0	1 10 0
	Moorings, London Docks, City Canal, or St. Katharine's Docks	1 0 0	1 4 0	1 8 0	1 12 0	1 18 0
Erith Reach and *vice versa*	Victoria and Albert Dock to Greenwich Pier	0 12 0	0 16 0	1 0 0	1 4 0	1 8 0
	Moorings, London Docks, City Canal, or St. Katharine's Docks	0 18 0	1 2 0	1 6 0	1 10 0	1 14 0
Woolwich or Blackwall, and *vice versa*	Moorings, London Docks, City Canal, or St. Katharine's Docks	0 16 0	0 18 0	1 0 0	1 2 0	1 4 0
Pilots duly licensed to conduct Vessels beyond Gravesend, either inwards or outwards, and continuing in charge to or from any of the within-mentioned places, as the case may be, are to be paid. — The Sea, the Downs, Orfordness, or Hoseley Bay, and *vice versa*.	Long Reach or Greenhithe	3 19 0	4 11 0	5 4 0	5 17 0	6 9 0
	Erith	4 3 0	4 16 0	5 8 0	6 1 0	6 14 0
	Woolwich or Blackwall	4 5 0	4 19 0	5 12 0	6 5 0	6 19 0
	Moorings, London Docks, City Canal, or St. Katharine's Docks	4 10 0	5 4 0	5 17 0	6 11 0	7 4 0
The Nore, or Warps, and *vice versa*.	Greenhithe, Long Reach, or Chatham	1 18 0	2 3 0	2 7 0	2 12 0	2 16 0
	Erith	2 1 0	2 6 0	2 12 0	2 17 0	3 3 0
	Woolwich or Blackwall	2 5 0	2 11 0	2 16 0	3 2 0	3 7 0
	Moorings, London Docks, City Canal, or St. Katherine's Docks	2 13 0	2 19 0	3 5 0	3 12 0	3 18 0

For taking a vessel into or out of Ramsgate, Margate, Dover, or Sandwich Harbours, 5*s*. per foot of the vessel's

For vessels exceeding 23 feet an increase in the rates for each foot or part of a foot, in the same proportion as

The several rates and prices specified above are subject to a reduction of one-fourth part, in respect of vessels or towed by a steam vessel for a part only of the distance for which any such rate or price may be payable, the distance so propelled or towed.

Inward-bound vessels discharging a pilot at Thames Haven, to pay him 10*s*. for travelling expenses.

RATES OF PILOTAGE.

Deptford Strond, or acting as such under the authority of the Acts of Parliament 6 Geo. IV., Ships and Vessels within the limits in the said Table mentioned.

12 Feet.	13 Feet.	14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5 4 0	5 12 0	6 0 0	6 10 0	7 0 0	7 10 0	8 10 0	9 10 0	10 14 0	11 18 0	13 2 0	14 6 0
1 8 0	1 10 0	1 12 0	1 16 0	2 0 0	2 4 0	2 8 0	2 12 0	3 0 0	3 8 0	3 16 0	4 4 0
1 0 0	1 2 0	1 4 0	1 8 0	1 12 0	1 16 0	2 0 0	2 4 0	2 10 0	2 16 0	3 2 0	3 8 0
2 9 0	2 13 0	2 17 0	3 2 0	3 7 0	3 12 0	4 1 0	4 10 0	5 0 0	5 10 0	6 0 0	6 10 0
5 18 0	6 7 0	6 16 0	7 11 0	8 6 0	9 0 0	10 0 0	11 0 0	12 6 0	13 11 0	14 16 0	16 2 0
4 18 0	5 6 0	5 14 0	6 4 0	6 14 0	7 4 0	8 2 0	9 0 0	10 0 0	11 0 0	12 0 0	13 0 0
5 16 0	6 6 0	6 16 0	7 8 0	8 0 0	8 12 0	9 12 0	10 12 0	11 18 0	13 4 0	14 10 0	15 16 0
5 17 0	6 8 0	6 18 0	7 10 0	8 1 0	8 12 0	9 10 0	10 7 0	11 13 0	13 0 0	14 5 0	15 11 0
6 14 0	7 6 0	7 18 0	8 12 0	9 6 0	10 0 0	11 0 0	12 0 0	13 10 0	15 0 0	16 10 0	18 0 0
1 6 0	1 8 0	1 10 0	1 14 0	1 18 0	2 2 0	2 6 0	2 10 0	2 14 0	2 18 0	3 2 0	3 6 0
3 1 0	3 5 0	3 11 0	3 16 0	3 19 0	4 5 0	4 14 0	5 2 0	5 15 0	6 8 0	6 15 0	7 17 0
2 12 0	2 16 0	3 0 0	3 8 0	3 16 0	4 4 0	4 12 0	5 0 0	5 12 0	6 4 0	6 16 0	7 8 0
2 10 0	2 16 0	3 2 0	3 8 0	3 14 0	4 0 0	4 6 0	4 12 0	4 18 0	5 4 0	5 10 0	5 16 0
3 6 0	3 10 0	3 14 0	4 2 0	4 10 0	4 18 0	5 8 0	5 18 0	6 10 0	7 2 0	7 14 0	8 6 0
3 12 0	3 16 0	4 0 0	4 8 0	4 16 0	5 4 0	5 16 0	6 8 0	7 2 0	7 16 0	8 8 0	9 2 0
1 6 0	1 8 0	1 10 0	1 14 0	1 18 0	2 2 0	2 6 0	2 10 0	2 16 0	3 2 0	3 8 0	3 14 0
0 14 0	0 16 0	0 18 0	1 0 0	1 2 0	1 4 0	1 6 0	1 8 0	1 10 0	1 14 0	1 18 0	2 2 0
1 8 0	1 12 0	1 16 0	2 0 0	2 4 0	2 8 0	2 12 0	2 16 0	3 0 0	3 8 0	3 16 0	4 4 0
1 14 0	1 18 0	2 2 0	2 8 0	2 14 0	3 0 0	3 8 0	3 16 0	4 8 0	5 0 0	5 12 0	6 2 0
2 6 0	2 12 0	2 18 0	3 4 0	3 10 0	3 16 0	4 4 0	4 12 0	5 6 0	6 0 0	6 14 0	7 8 0
2 8 0	2 14 0	3 0 0	3 6 0	3 12 0	3 18 0	4 6 0	4 14 0	5 10 0	6 6 0	7 2 0	7 18 0
2 12 0	2 18 0	3 4 0	3 12 0	4 0 0	4 8 0	4 18 0	5 8 0	6 8 0	7 8 0	8 8 0	9 8 0
1 12 0	1 16 0	2 0 0	2 6 0	2 12 0	2 18 0	3 6 0	3 14 0	4 8 0	5 2 0	5 16 0	6 10 0
1 14 0	1 18 0	2 2 0	2 10 0	2 18 0	3 6 0	3 14 0	4 2 0	4 16 0	5 10 0	6 4 0	6 18 0
2 4 0	2 10 0	2 16 0	3 4 0	3 12 0	4 0 0	4 8 0	4 16 0	5 10 0	6 4 0	6 18 0	7 12 0
1 12 0	1 16 0	2 0 0	2 6 0	2 12 0	2 18 0	3 4 0	3 10 0	3 18 0	4 6 0	4 14 0	5 2 0
1 18 0	2 2 0	2 6 0	2 12 0	2 18 0	3 4 0	3 8 0	3 12 0	4 0 0	4 8 0	4 16 0	5 4 0
1 8 0	1 12 0	1 16 0	2 0 0	2 4 0	2 8 0	2 12 0	2 16 0	3 0 0	3 4 0	3 6 0	3 10 0
7 2 0	7 14 0	8 8 0	9 0 0	9 6 0	10 7 0	11 12 0	13 1 0	15 0 0	16 10 0	17 18 0	19 18 0
7 6 0	7 19 0	8 13 0	9 8 0	9 14 0	10 11 0	12 5 0	13 19 0	15 18 0	17 16 0	18 19 0	21 3 0
7 13 0	8 6 0	9 0 0	9 15 0	10 1 0	10 18 0	12 12 0	14 6 0	16 9 0	18 11 0	19 13 0	21 17 0
7 18 0	8 11 0	9 7 0	10 2 0	10 8 0	11 5 0	13 3 0	15 1 0	17 4 0	19 6 0	20 12 0	23 0 0
3 1 0	3 5 0	3 11 0	3 16 0	3 19 0	4 5 0	4 14 0	5 2 0	5 15 0	6 8 0	6 15 0	7 17 0
3 8 0	3 13 0	4 0 0	4 6 0	4 11 0	5 0 0	5 13 0	6 5 0	7 1 0	7 16 0	8 7 0	9 7 0
3 12 0	3 18 0	4 7 0	4 16 0	5 1 0	5 11 0	6 4 0	6 16 0	7 13 0	8 10 0	9 4 0	10 8 0
4 4 0	4 10 0	4 19 0	5 8 0	5 13 0	6 3 0	7 0 0	7 17 0	8 18 0	10 0 0	10 12 0	11 16 0

draft of water.
between 22 and 23 feet.
propelled by steam, and vessels towed by steam vessels, provided that if any such vessel shall be propelled by steam, reduction of one-fourth shall be made on such part only of the said rate or price as shall be proportionate to the

FOR PUTTING A PILOT ON BOARD A VESSEL.						
	60 Tons and under 150.	150 Tons and under 250	250 Tons and under 400.	400 Tons and under 600.	600 Tons and under 1000.	1000 Tons and upwards.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
From Hired Cutters or from the Shore .	1 0 0	1 5 0	1 10 0	2 0 0	2 10 0	3 3 0
From the Corporation's Cutters . .	0 15 0	1 0 0	1 5 0	1 10 0	2 0 0	2 5 0

A pilot taking charge of a foreign vessel, on board of which there may not be any individual qualified to interpret his orders, shall be authorised to employ a person to assist him as leadsman or interpreter; provided it be distinctly understood that the necessity for the employment of such person shall be proved to the satisfaction of the Corporation of Trinity House, in which case only the following rates shall be chargeable in addition to the regular pilotage, viz. .

For the whole run from Sea to Gravesend . . . £2 10 0
ditto from Gravesend to Sea . . . 1 0 0

The additional rate, for intermediate portions of a foot, in the draft to be regulated as follows, viz. :

For 3 inches and under . . . . . No addition.
For more than 3 inches and under 9 inches . The medium between the two rates.
For 7 inches and upwards . . . . The rate for the next foot.

For removing a ship or vessel from moorings into a dry or wet dock,(o) or from one part of the river situated above Greenwich to another part of the river so situated; or for mooring or unmooring a vessel with two anchors; or for putting a vessel alongside a pier or wharf and remaining while cattle or merchandise are being discharged or taken on board; or for mooring vessels laden with petroleum in accordance with the harbour regulations; or for attendance while adjusting compasses, the following charge may be made in addition to the pilotage, viz. .

For a Ship under 300 tons £0 15 0
Ditto of 300 to 1000 tons 1 0 0
Ditto *above* 1000 tons 1 10 0

Approved by Her Majesty in Council

At the Court at Windsor, the 17*th day of May*, 1882.

(*Signed*) C. L. PEEL.

(o) See *The Clan Grant*, 12 P. D. 139.

No. 13 (see § 612).

Dietary Scale C.

For Voyages exceeding eighty-four days for sailing vessels, of fifty days for steamers:

	Lb.	Oz.	
Beef or Pork, or partly one and partly the other	2	4	Per Week per Statute Adult.
Preserved Meat	1	0	
Suet	0	6	
Butter	0	4	
Bread or Biscuit not inferior in quality to Navy Biscuit	2	8	
Wheaten Flour not inferior to best Seconds	3	8	
Oatmeal, Rice, and Peas or any two of them	2	0	
Potatoes	2	0	
Raisins	0	6	
Tea	0	2	
Sugar	1	0	
Salt	0	2	
Mustard	0	0½	
Pepper, Black or White Ground	0	0¼	
Preserved and Dried Vegetables, that is Cabbages Carrots, Turnips, Onions, Celery, and Mint, or some one or more of them	2 Portions.		
Vinegar or Mixed Pickles	1 Gill.		

With such power of substitution in the above articles as is given in the thirty-seventh section of the Passengers Act, 1855.

For Children between One and Four Years of Age, in addition to Half-rations of the above-named Articles:

	Per Week.
Preserved Milk	3 Gills.
Condensed Egg	1 Oz.
or Fresh Eggs	3 „

For Children between Four and Twelve Months of Age:

Water	21 Pints.
Preserved Milk	7 Gills.
„ Soup	9 Oz.
Condensed Egg	1 „
or Fresh Eggs	3 „
Biscuit	12 „
Oatmeal	4 „
Flour	8 „
Rice	4 „
Sugar	10 „

Given under our hands this twenty-sixth day of April One thousand eight hundred and fifty-six.

(Signed) T. W. C. Murdoch,
C. Alexr. Wood,
Emigration Commissioners,

Emigration Commission,
8, Park Street, Westminster.

No. 14 (see § 619).

A.—*Order in Council of the 9th Aug.* 1866.

At the Court at Osborne House, Isle of Wight, the 9th day of August, 1866.

From and after the 20th instant, and so long as this order shall continue in force, every passenger ship, carrying more than 50 passengers on any voyage to which the said Act extends, shall, whatever be the duration of the voyage, and subject to the provisions of the 42nd section of the said Act, carry a duly qualified medical practitioner, who shall be rated on the ship's articles.

To prevent all doubts in the construction of this Order in Council, it is hereby further ordered, that the terms "passenger," and "passenger ship," shall have the same significations as are assigned to them respectively in the said "Passengers Act, 1855," (*p*) and unless inconsistent with the context words of one number shall import both numbers.

B.—*Order in Council of the 3rd Feb.* 1863.

At the Court at Osborne House, Isle of Wight, the 3rd day of February, 1863.

Whereas, it is expedient to make provision for preserving order in private passenger ships conveying to the colony of Victoria, in Australia, as many as ten unprotected female passengers.

1. In the construction, and for the purposes of this Order in Council, the term "unprotected female passengers," shall signify every female passenger between the ages of twelve and thirty-five, proceeding to the colony of Victoria, by virtue of a passenger warrant issued by the Government of that colony, who, if married, shall not be accompanied by her husband, or if unmarried, shall not be accompanied by her father or stepfather, or by a married brother with his wife, or a married sister with her husband, or by an unmarried brother over the age of twenty-five; the terms "Passengers," "Passenger Ship," and "Master," shall have the same significations as are assigned to them respectively in the said "Passengers Act, 1855," (*z*) and words used in the plural number shall import the singular number also and the converse, unless inconsistent with the context.

2. All unprotected female passengers shall, during the voyage, be berthed, in open berths, in a compartment in the aftermost part of the upper passenger deck of the ship, effectually divided off by substantial bulkheads from the other portions of such deck; and no single men, or men without their wives, shall be berthed next to the bulkhead dividing off such compartment.

3. The children under twelve years of age of married female passengers unaccompanied by their husbands, shall be berthed with their mothers.

4. There shall be an entrance to such compartment from the upper deck or poop, exclusively appropriated to the use of such female passengers.

5. There shall be carried on board a matron, to be appointed by the owner or master of the ship, and to be charged with the maintenance of discipline among such female passengers as aforesaid.

6. No unprotected female passenger shall on any account be allowed to act, or shall act as servant or attendant on the surgeon, master, or any of the officers of the ship, or on any male cabin passenger.

7. All intercourse between unprotected female passengers and any of the officers or crew of the ship, or between such females and any of the male passengers (except brothers or brothers-in-law, and in case of unprotected married women, their children) is hereby strictly prohibited.

8. The master of the ship, before sailing, shall, with the approval of the

(*p*) See § 600.

emigration officer at the port of clearance, mark out the portion of the poop or main deck to be assigned for the purpose of exercise to such unprotected female passengers, who, during the voyage, shall keep within the limits so marked out.

9. Before dark, all such female passengers as aforesaid shall go below to their own compartment, and as soon as they are there collected, the master shall lock the entrance, and on no account shall any man enter the compartment during the night, except the surgeon in case of illness, or the officers and crew in case danger to the ship shall render their entrance necessary.

10. If the surgeon is required to attend professionally any of such unprotected female passengers at night, the matron shall accompany and remain with him while he discharges his duties.

11. The master of the ship shall afford to the matron and to the surgeon all the assistance in his power in carrying these regulations into effect.

12. Any person who shall refuse or neglect to obey any of the rules herein contained, or who shall obstruct the surgeon or master of the ship in the execution of any duty hereby imposed on them respectively, or who shall be guilty of insubordinate conduct, shall, on conviction, be liable for each offence to the penalties of fine and imprisonment, imposed by the said Passengers Act, 1855.

13. This Order in Council shall not apply to ships chartered by her Majesty's Emigration Commissioners.

C.—*Order in Council of the 7th Jan.* 1864 (*Rules for preserving Order, promoting Health, &c., on Board Passenger Ships*).

At the Court at Osborne House, Isle of Wight, the 7th day of January, 1864.

1. All passengers who shall not be prevented by sickness or other sufficient cause, to be determined by the surgeon, or in ships carrying no surgeon, by the master, shall rise not later than seven o'clock A.M., at which hour the fires shall be lighted.

2. It shall be the duty of the cook or cooks, appointed under the thirty-ninth section of the said "Passengers Act, 1855," to light the fires, and to take care that they be kept alight during the day; and also to take care that each passenger or family of passengers shall have the use of the fireplace at proper hours, in an order to be fixed by the master.

3. When the passengers are dressed, their beds shall be rolled up.

4. The decks, including the space under the bottom of the berths, shall be swept before breakfast, and all dirt thrown overboard.

5. The breakfast hour shall be from eight to nine o'clock A.M. Before the commencement of breakfast, all the emigrants, except as hereinbefore excepted, are to be out of bed and dressed, and the beds rolled up, and the deck on which the emigrants live properly swept.

6. The deck shall be further swept after every meal, and after breakfast is concluded shall be also dry holystoned or scraped. This duty, as well as that of cleaning the ladders, hospitals, round houses, and water closets, and of pumping water into the cisterns or tanks for the supply of the water closets, shall be performed by a party who shall be taken in rotation from the adult males above fourteen, in the proportion of five to every one hundred emigrants, and shall be considered as sweepers for the day. But the single women shall do all necessary acts for keeping clean and in a proper state their own compartment, where a separate compartment is allotted to them, and the occupant of each berth shall see that his or her own berth is well brushed out.

7. Dinner shall commence at one o'clock P.M., and supper at six P.M.

8. The fires shall be extinguished at seven P.M. unless otherwise directed by the master or required for the use of the sick; and the emigrants shall be in their berths at ten o'clock P.M., except under the permission or authority of the surgeon, or, if there be no surgeon, of the master.

9. On each passenger deck there shall be lit at dusk, and kept burning till daylight, three safety lamps, and such further number as shall allow one to be placed at each of the hatchways used by passengers.

10. No naked light shall be allowed between decks or in the hold, at any time or on any account.

11. The scuttles and stern ports, if any, shall, weather permitting, be opened at seven o'clock A.M. and kept open till ten o'clock P.M.; and the hatches shall be kept open whenever the weather permits.

12. The coppers and cooking utensils shall be cleaned every day, and the cisterns kept filled with water.

13. The beds shall be well shaken and aired on deck, weather permitting, at least twice a week.

14. The bottom boards of the berths, if not fixtures, shall be removed and dry-scrubbed, and, weather permitting, taken on deck, at least twice a week.

15. Two days in the week shall be appointed by the master as washing days; but no washing or drying of clothes shall on any account be permitted between decks.

16. On Sunday mornings the passengers shall be mustered at ten o'clock A.M., and will be expected to appear in clean and decent apparel. The Lord's day shall be observed as religiously as circumstances will admit.

17. No spirits or gunpowder shall be taken on board by any passenger; and if either of those articles be discovered in the possession of a passenger it shall be taken into custody of the master during the voyage, and not returned to the passenger until he has landed or is on the point of landing.

18. No loose hay or straw shall be allowed below for any purpose.

19. No smoking shall be allowed between decks.

20. The following kinds of misconduct are hereby strictly prohibited; that is to say, all immoral or indecent acts or conduct, taking improper liberties or using improper familiarity with the female passengers, using blasphemous, obscene, or indecent language, or language tending to a breach of the peace, swearing, gambling, drunkenness, fighting, disorderly, riotous, quarrelsome, or insubordinate conduct, also all deposits of filth or offensive acts of uncleanliness in the between decks: Provided that no conviction under the said Passengers Act for any of the offences herein specified shall operate as a bar to any civil or criminal proceedings which may in the ordinary course of law be instituted for the same offence by any party aggrieved.

21. Fire-arms, swords, and other offensive weapons shall, as soon as the passengers embark, be placed in the custody of the master.

22. No sailors shall be allowed to remain on the passenger deck among the passengers, except on duty.

23. No passenger shall go into the ship's cookhouse without special permission from the master, nor remain in the forecastle among the sailors on any account.

24. In vessels not expressly required by the said "Passengers Act, 1855," to have on board such ventilating apparatus as therein mentioned, such other provision shall be made for ventilation as shall be required by the emigration officer at the port of embarkation, or, in his absence, by the officers of Customs.

25. And, to prevent all doubts in the construction of this Order in Council, it is hereby further ordered, that the terms "United Kingdom," "Passenger," "Passenger Ship," "Passenger Deck," and "Master," shall herein have the

same significations as are assigned to them respectively in the said "Passengers Act, 1855" (*q*); and, unless inconsistent with the context, words of one number shall import both numbers.

D.—*Order in Council of the 28th June*, 1875 (*Distilling Apparatus in Passenger Ships*).

At the Court at Windsor, the 28th day of June, 1875.

Any passenger ship, whether propelled by steam engines or by sails only, or by sails and steam engines, may be cleared out and proceed on her voyage, having on board, in tanks or casks, only half of the quantity of pure water required by the said Act to be carried for the use of the passengers; provided that the following rules and regulations be observed; that is to say,

1. That there be on board such ship an efficient apparatus for distilling fresh water from salt water of such a description as the Board of Trade may from time to time approve.

2. That the owners, charterers, or master of such ship, before clearance, lodge with the Emigration Officer at the port of clearance, a certificate from one of the engineer surveyors appointed by the Board of Trade, declaring that the apparatus is in good working condition, and that within seven days immediately preceding the date of such certificate the same had been examined by him, and stating the number of imperial gallons of pure fresh water which it is capable of producing in every twenty-four hours, and further declaring that the apparatus on board is such as has been approved by the Board of Trade as aforesaid.

3. That in every case such Emigration Officer shall be satisfied that the number of gallons of pure water which the apparatus is so certified to be capable of producing in every twenty-four hours, is a number of gallons equal to the whole number of persons about to proceed on the intended voyage of such ship, that is to say, one gallon per head for the whole number of cabin passengers, passengers, and crew.

4. That there is rated on the ship's articles, and that there is on board the ship, some person or persons, who, to the satisfaction of the said Emigration Officer, shall be competent for the proper management and repair of such distilling apparatus; and to prevent all doubts on the construction of this Order in Council, it is hereby further ordered that the terms "Emigration Officer," "Statute Adult," "Master," and "Passenger Ship," shall herein have the same significations as are assigned to them in the said "Passengers Act, 1855," and "The Passengers Act Amendment Act, 1863," respectively,(*q*) and the term "Board of Trade" shall herein have the meaning assigned to it by "The Merchant Shipping Act, 1854."

No. 15 (see §§ 709, 748).

TABLE W in the SCHEDULE to the MERCHANT SHIPPING ACT, 1854.

SALVAGE BOND.

[*N.B.—Any of the particulars not known, or not required, by reason of the claim being only against the cargo, &c., may be omitted.*]

Whereas certain salvage services are alleged to have been rendered by the ship [*insert names of ship and of commander*], commander, to the merchant ship [*insert names of ship and master*], master, belonging to [*name and place of business or residence of owner of ship*], freighted by [*the same of the freighter*], and to the cargo therein, consisting of [*state very shortly the descriptions and quantities of the goods, and the names and addresses of their owners and consignees*]:

(*q*) See § 600.

And whereas the said ship and cargo have been brought into the port of [*insert name and situation of port*], and a statement of the salvage claim has been sent to [*insert the name of the consular officer or Vice-Admiralty judge, and of the office he fills*], and he has fixed the amount to be inserted in this bond at the sum of [*state the sum*] :.

Now I, the said [*master's name*], do hereby, in pursuance of the Merchant Shipping Act, 1854, bind the several owners for the time being of the said ship and of the cargo therein, and of the freight payable in respect of such cargo, and their respective heirs, executors, and administrators, to pay among them such sum not exceeding the said sum of [*state the sum fixed*], in such proportions and to such persons as [*if the parties agree on any other court, substitute the name of it here*], the High Court of Admiralty in England shall adjudge to be payable as salvage for the services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [*insert the date*] day of

Signed, sealed, and delivered by the said [*master's name*].

(L.S.)

In the presence of [*name of consular officer or Vice-Admiralty judge, and of the office he fills*].

No. 16.

Extracts from SCHEDULE (B) to the CUSTOMS CONSOLIDATION ACT, 1876.

A (see § 761).

Form No. 1.

Official Number.
Number of Register.
Date of Registry.
Port of { If Sailing Vessel or Steamer.

REPORT.

Ship's Name.	Tonnage.	British or Foreign; if British, Port of Registry; if Foreign, Country to which she belongs.	Number of Crew.		Name of Master, and whether a British or Foreign Subject.	Port or Place from whence arrived.
			British Seamen.	Foreign Seamen.		
		Here state the particulars according to the above headings.				
		Total . . .				

CARGO.

1	2	3	4	5	6	7
Name or Names of Places where laden in order of Time.	Marks.	Nos.	Packages and Descriptions of Goods, Particulars of Goods stowed loose, and General Denomination of Contents of each Package of Tobacco, Cigars, or Snuff intended to be imported at this Port.	Particulars of Packages and Goods (if any) for any other Port in the United Kingdom.	Goods (if any) to be transhipped or to remain on board for Exportation.	Name of Consignee.
			Here state the particulars according to the above headings, or if in Ballast, state "in Ballast only."			
If any wreck fallen in with or picked up, to be stated.						

STORES.

Surplus stores remaining on board, viz.:—

Number of alien passengers (if any) . . _____
Pilot's names . . . . . _____
At what station ship lying . . . . _____
Agent's name and address . . . . _____

I do declare that the above is a just report of my ship and of her lading, and that the particulars therein inserted are true to the best of my knowledge, and that I have not broken bulk or delivered any goods out of my said ship since her departure from the last foreign place of loading (except, *if so*, at , *stating where*).

(Signed) *Master.*

Signed and declared this day of 18 .

In the presence of

Collector.

B (see § 763).

Form No. 6.

ENTRY OUTWARDS.

Port of _____

Ship's Name		Tonnage.	Master's Name.	Port of Destination.
If British, Name of Port of her Registry.	If Foreign, Name of Country to which she belongs.			

Lying at _____ Dock or Station.

(Signed) _____

Master or Agent.

Date of Entry.

If ship shall have commenced her lading at any other port (name of such port).

C (see § 766).

Form No. 10.

CONTENT.

Port of _____

Ship's Name and Destination.	Number of Tons.	Number of Boats.	If British, Port of Registry. If Foreign, the Country.	Number of Crew.	Name of Master.	With or without Passengers or Troops.

WAREHOUSED, TRANSHIPMENT, DRAWBACK, AND RESTRICTED GOODS.

Marks and Numbers, if any, of Packages.	Number and Description of Packages.

Particulars to be stated according to the above headings.

Cleared

Examined
(Signed) _____
Searcher.

Dated _____

I do declare that the above content is a true account of all goods above described, shipped, and intended to be shipped on board the above-named ship, and correct in all particulars.

Signed _____
Master.

Signed and declared this day of
before me,
(Signed)
_____ Collector or proper Officer of Customs.

D (see § 768).

Form No. 11.

TRANSIRE.

Port of

Ship's Name.	Tonnage.	Port of Registry.	Master's Name.	Whither Bound.

Foreign Goods, distinguishing Warehoused Goods removed under Bond.	Quantities of Corn, Grain, Meal, Flour, or Malt.	Goods liable to Duty of Excise or entitled to Drawback thereof.	Here state "Sundry other Goods" or "No other Goods," as the case may be.

(Signed) _____
Master.

Cleared the day of 18 .
(Signed)
Collector or other proper Officer.

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